

CONTRACT DOCUMENTS

FOR

**TASA US 83/84 BIKE/PED IMPROVEMENTS
TAYLOR COUNTY
CSJ #0908-33-099
PROJECT #STP 1902(193)TAP**



July 2020

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DO NOT DISASSEMBLE

PREPARED BY:
ENGINEERING DIVISION
CITY OF ABILENE, TEXAS



Charlie J. Thomas
7/15/2020

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SCOPE OF PROJECT

This contract consists of constructing sidewalks on Texas Ave. from Corsicana Ave. To S 14th St., S 14th St. from Texas Ave. to S Clack, and S Clack from S 14th St. to Catclaw. Also included in this contract will be pedestrian signal enhancements, and ADA Ramps.

60 working days have been allotted for this project.

Note to Contractors:

1. No Right-of-Way acquisition was required for this contract.

(For this contract, this item is the responsibility of the City of Abilene.)

A race conscious DBE goal of 5% has been established for this contract.

INVITATION FOR BIDS

The City of Abilene will receive sealed, written bids in the Purchasing Department at City Hall, 555 Walnut, Suite 201-A, Abilene, Texas, until **11:00 a.m. on August 11, 2020**, for:

TASA US 83/84 BIKE/PED IMPROVEMENTS

A Pre-Bid Conference will be held in the Public Works Conference Room of Abilene City Hall at **9:30 a.m. on August 4, 2020**, to discuss the scope of the project and answer any questions prospective bidders may have concerning specifics of the project. The Contractor or his designated representative may attend.

The City will return unopened any bid received after bid closing time. The bids will be publicly opened and read aloud immediately after closing deadline in the Council Chambers – Abilene City Hall, 555 Walnut, Abilene, Texas.

Contract Documents, including plans and specifications, are on file and may be examined without charge in the Purchasing Department at Abilene City Hall, 555 Walnut, Suite 201-A, Abilene, Texas. A copy of the contract documents may be found on the city website at www.abilenetx.gov.

Performance and Payment Bond information is found in the Instructions to Bidders. All bids must comply with specifications. All bids must remain open for 60 days after bid opening.

The City will award the contract to the lowest responsible bidder. The City reserves the right to reject any or all bids and waive any formalities and technicalities.

(Signature)

MELISSA GORMAN

Purchasing Administrator
City of Abilene

Date: _____

DEFINITIONS

- 1.1 Wherever used in the Contract Documents, these terms have the meanings indicated. The singular includes the plural.
- 1.2 Addendum - Written or graphic instruments issued before the Contract is executed to modify, interpret, clarify or correct the Contract Documents.
- 1.3 Bid - Bidder's written offer on City's form stating prices for Work to be performed.
- 1.4 Bidder - Any person, firm or corporation submitting a Bid for the Work.
- 1.5 Bond - Security instruments, including Bid, Performance and Payment, that Contractor and Contractor's surety must furnish to the City.
- 1.6 Change Order - City's written authorization to the Contractor to add, delete or revise Contract work, or adjusting the contract price or contract time.
- 1.7 City or Owner - Abilene, Texas.
- 1.8 Contract Documents - Collectively, the Invitation for Bids, Instructions to Bidders, Bid, Contract, Performance Bond, Payment Bond, General Conditions, Supplementary Conditions, Special Conditions, Notice of Award, Notice to Proceed, Change Orders, Plans, Drawings, Specifications, and all Addenda.
- 1.9 Contract Price - The total amount the City will pay the Contractor for the Work.
- 1.10 Contract Time - The number of working days in which the Contractor must complete the Work.
- 1.11 Contractor - The person, firm or corporation with whom the City executes a Contract.
- 1.12 Drawings - Contract Documents, prepared or approved by the Engineer, showing characteristics and scope of the work.
- 1.13 Extra Work - The term "Extra Work" as used in this Contract shall be understood to mean and include all work that may be required by the Owner to be done by the Contractor to accomplish any change, alteration or addition to the work shown on the plans, or reasonably implied by the specifications, and not covered by the Contractor's Proposal, except as provided under "Change and Alterations" herein.
- 1.14 Field Order - A written directive from the Engineer to the Contractor to change the Work without adjusting Contract Price or extending Contract Time.
- 1.15 Holidays - During the performance of this Contract, holidays are defined to be the following:
 - January 1st - New Year's Day
 - Third Monday in January - Martin Luther King Day
 - Last Monday in May - Memorial Day
 - July 4th - Independence Day
 - First Monday in September - Labor Day
 - Fourth Thursday & Friday of November - Thanksgiving
 - December 25th - Christmas
- 1.16 Notice of Award - Written notice from City to the successful Bidder accepting the Bid.

- 1.17 Notice to Proceed - The written notice from City to the Contractor authorizing the Contractor to begin work and identifying the first day of the Work calendar.
- 1.18 Engineer - The person, firm or corporation acting as Architect or Engineer for the Work.
- 1.19 Project - The undertaking to be performed by the Work.
- 1.20 Resident Project Representative - The City's agent assigned to monitor any of the project site.
- 1.21 Shop Drawings - All drawings, diagrams, illustrations, brochures, schedules or data prepared by the Contractor, subcontractor, manufacturer, supplier, or distributor, to illustrate how to fabricate or install specific portions of the Work.
- 1.22 Special Conditions - Insurance requirements and prevailing wage rates, which apply to the Project.
- 1.23 Specifications - Written technical descriptions of materials, equipment, construction systems, standards and workmanship.
- 1.24 Subcontractor - An individual, firm, or corporation directly contracting with the Contractor or any other Subcontractor to perform part of the Work at the site.
- 1.25 Substantial Completion - The date the Engineer certifies the project construction, or a specified part of it, is sufficiently finished so that the City can use the project, or specified part, for its intended purpose.
- 1.26 Supplementary Conditions - Modifications, additions or deletions to the General Conditions to meet specific project conditions.
- 1.27 Supplier - Any person or organization supplying materials or equipment for the Work, including that fabricated to a special design, but not performing labor at the Work site.
- 1.28 TxDOT - Texas Department of Transportation
- 1.29 Work - All labor, and incorporated materials and equipment necessary to produce the construction required by the Contract Documents.
- 1.30 Working Day - Any day not including Saturdays, Sundays, or any legal holidays, in which weather or other conditions not under the control of the Contractor will permit construction of the principal units of the work for a continuous period of not less than seven (7) hours between 7:00 a.m. and 6:00 p.m.
- 1.31 Written Notice - Information relating to the Project which is served on another party when posted by certified or registered mail to the party at the last given address, or delivered in person to the party or authorized representative on the Work..

INSTRUCTIONS TO BIDDERS

Instructions to bidders are found in the City of Abilene's Standard Specifications for Construction adopted September, 2006, Part I, Division I, Item 2, with the exception of the section amended, below as follows:

2. QUALIFICATION OF BIDDERS

To demonstrate the Bidder's abilities, each Bidder must complete the Statement of Bidder's Qualifications.

5. BID SECURITY

- . Bid security is not required.

6. CONTRACT TIME

It is essential to the City's operations that the Project be completed and in service within the contracted time. The Contractor is subject to liquidated damages if the Work is not completed on time.

8. BID SUBMISSION

Bids by Partnerships must be timely submitted in an opaque, sealed envelope, marked with the Project title and name and address of the Bidder and other required documents. The City will return late bids unopened, and will not consider them.

9. PREVAILING WAGE RATES

The minimum prevailing wage rates for the performance of this Contract are attached as Exhibit A. Said exhibit shall become a part of the Contract Document. For federally funded projects, wage rates must comply with Federal Law.

12. BIDS REMAIN OPEN

All bids remain open for 60 days. The City reserves the right to release any Bid early.

18. EQUAL EMPLOYMENT OPPORTUNITY

It is the City's policy to recruit, employ, and to provide compensation, promotion, and other conditions of employment without regard to race, color, religion, sex, age, national origin, or disability. The City affirms that employment decisions shall be made only on the basis of bonafide occupational qualifications. The City shall continually review its employment practices and personnel procedures and take positive steps to assure that equality of employment opportunity in the City of Abilene, Texas, is a fact as well as an ideal.

19. VERIFICATION OF EMPLOYMENT ELIGIBILITY

Contractor must comply with the Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. Contractor -- not City -- must verify eligibility for employment as required by IRCA.

20. MINORITY AND WOMEN BUSINESS ENTERPRISES

This contract must comply with the Texas Department of Transportation's Federally Approved Disadvantaged Business Enterprise Program requirements found in the Scope of Work.

21. PRISON AND/OR CONVICT PRODUCED MATERIALS

Materials made by convicts may not be used on this project unless the materials were produced by convicts who are on parole, supervised release, or probation from a prison or produced in a qualified prison facility and the cumulative annual production amount of such materials for use in Federal-aid highway construction does not exceed the amount of such materials produced in such facility for use in Federal-aid highway construction during the 12-month period ending July 1, 1987.

22. BUY AMERICA

This grant project requires that all iron, steel and manufactured goods used for the construction of this contract be produced in the United States, in conformance with 2004 TxDOT Standard Specification Item 6.1.A.

EXHIBIT "A" WAGE RATE

The minimum prevailing wage rates for the locality in which this work is to be performed are shown below.

General Decision Number: TX190002 01/03/2020 TX2

Superseded General Decision Number: TX20180002

State: Texas

Construction Types: Heavy and Highway

Counties: Armstrong, Carson, Crosby, Ector, Irion, Lubbock, Midland, Potter, Randall, Taylor and Tom Green Counties in Texas.

HEAVY & HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2020

* SUTX2011-002 08/02/2011

Rates	Fringes
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CEMENT MASON/CONCRETE	
FINISHER (Paving & Structures)...	\$ 13.55
ELECTRICIAN.....	\$ 20.96

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 12.36
Structures.....\$ 13.52

LABORER

Asphalt Raker.....\$ 12.28
Flagger.....\$ 9.30
Laborer, Common.....\$ 10.30
Laborer, Utility.....\$ 11.80
Work Zone Barricade
Servicer.....\$ 10.30

POWER EQUIPMENT OPERATOR:

Asphalt Distributer.....\$ 14.87
Asphalt Paving Machine.....\$ 13.40
Broom and Sweeper.....\$ 11.21
Crane, Lattice Boom 80
Tons or Less.....\$ 16.82
Crawler Tractor Operator....\$ 13.96
Excavator, 50,000 lbs or
less.....\$ 13.46
Front End Loader Operator,
Over 3 CY.....\$ 12.77
Front End Loader, 3CY or
less.....\$ 12.28
Loader/Backhoe.....\$ 14.18
Mechanic.....\$ 20.14
Milling Machine.....\$ 15.54
Motor Grader, Rough.....\$ 16.15
Motor Grader, Fine.....\$ 17.49
Pavement Marking Machine....\$ 16.42
Reclaimer/Pulverizer.....\$ 12.85
Roller, Asphalt.....\$ 10.95
Roller, Other.....\$ 10.36
Scraper.....\$ 10.61
Spreader Box.....\$ 12.60

Servicer.....\$ 13.98

Steel Worker (Reinforcing).....\$ 13.50

TRUCK DRIVER

Lowboy-Float.....\$ 14.46
Single Axle.....\$ 12.74
Single or Tandem Axle Dump..\$ 11.33
Tandem Axle Tractor with
Semi.....\$ 12.49

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave
for Federal Contractors applies to all contracts subject to the

Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.)

and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

SPECIAL CONDITIONS

SC.1 INSURANCE

A. GENERAL REQUIREMENTS

The Contractor must maintain the types and amounts of required insurance throughout the term of the agreement. Contractor is solely responsible for providing a certificate of insurance evidencing the required coverage types and amounts. The City may terminate this contractor if Contractor fails to timely comply with these requirements.

Required insurance must be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies are subject to examination and approval by the City's office of Risk Management for their adequacy as to content, form of protection, and providing company.

Required insurance naming the City as additional insured must be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

Before the Notice to Proceed is issued for this contract, the Contractor must provide the City Secretary an original certificate of insurance or a certified copy of the insurance policy evidencing the required insurance. Thereafter, the Contractor must furnish new certificates or copies of the policy before any existing certificate expires.

B. ADDITIONAL REQUIREMENTS

The required liability insurance and their certificates must:

1. Name the City as an additional insured with respect to operations for which this contract is made.
2. Provide for 30 day advance written notice of cancellation or material change.

C. STATE MANDATED WORKERS' COMPENSATION INSURANCE COVERAGE

a. Definitions

Certificate of coverage ("certificate") - a copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC 84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the City of Abilene.

Persons providing services on the project ("subcontractors" in 406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitations, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities

unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- b. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- c. The Contractor must provide a certificate of coverage to the City of Abilene prior to being awarded the contract.
- d. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City of Abilene showing that coverage has been extended.
- e. The Contractor shall obtain from each person providing services on a project, and provide to the City of Abilene:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the City of Abilene will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- f. The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.
- g. The Contractor shall notify the City of Abilene in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- h. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- i. The Contractor shall contractually require each person with whom it contracts to provide services on a project to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing service on the project, for the duration of the project;
 - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

- (4) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
 - (6) notify the City of Abilene in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing service on the project; and
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1)-(7), with the certificates of coverage to be provided to the person for whom they are providing services
- j. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the City of Abilene that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the City of Abilene to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the City of Abilene.

D. TYPES AND AMOUNTS OF INSURANCE

The following types and amounts of insurance are required in this contract.

*****ANY CHANGES, ADDITIONS, OR DELETIONS TO REQUIRED INSURANCE COVERAGES WILL BE ISSUED IN AN ADDENDUM**

Type	Amount
1. Workers' Compensation Employer's Liability	Statutory \$100,000 per occurrence
2. Commercial (Public) Liability including but not limited to: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Contractual Liability (Insuring above indemnity) And where the exposures exist: e. Explosion, Collapse and Underground	\$500,000 combined single limit for bodily injury and property damage (per occurrence)
3. Business Automobile Liability to include coverage for: a. Owned/Leased Autos b. Non-Owned Autos c. Hired Cars	\$500,000 combined single limit for bodily injury and property damage (per occurrence)

SUPPLEMENTARY CONDITIONS

1. DESCRIPTION OF WORK

The Plans and general notes will show in detail and describe the work to be accomplished under the contract.

2. CONTRACT SET UP

A bid will be considered incomplete and invalid if it does not include all completed bid schedules and certification forms.

3. TIME OF COMMENCEMENT AND FINAL COMPLETION

The work to be performed shall be commenced on/or before the date stipulated in the Notice to Proceed and final completion shall be achieved not later than the number of working days as stated in the contract.

4. BASIS OF PAYMENT AND PARTIAL PAYMENTS

The City of Abilene will pay the CONTRACTOR for all the work performed and accepted under this Contract on the basis of actual measurement of quantities in place at contracted unit prices for various items of improvement.

5. CONSTRUCTION SEQUENCE

When the construction begins, it is important that the CONTRACTOR should stay through substantial completion of the proposed improvements including final clean up at each work site.

6. CURB RAMPS AND SIDEWALKS

Curb ramps shall be constructed as shown on the Plans. The location of the curb ramps may be adjusted in the field at the direction of the Engineer. The curb ramps shall comply with the Uniform Federal Accessibility Standards. These standards include the following:

Maximum longitudinal slope of 1 in 12.

Maximum transverse slope of 1 in 50.

Minimum width of ramp surface of 36 inches.

Smooth transition between the curb ramp and the adjoining surface (sidewalk, gutter, street etc.).

The construction of curb ramps and sidewalks is governed by the requirements of Item 531 "Sidewalks". The steel reinforcement shall be welded wire fabric as shown on the drawings.

The surface area shall be measured in square feet and shall be paid at the unit price bid for construction of sidewalk/curb ramps.

7. EROSION CONTROL

It shall be the Contractor's responsibility to ensure that proper erosion control measures, if they become necessary, are installed and maintained at the construction site. When directed by the Engineer, the Contractor shall promptly remove the sediment deposits collected as result of erosion, within the right of way and the

private properties. The cost associated with installation, maintenance and removal of erosion control measures will be considered as incidental to the contract.

8. SPECIFICATIONS

All Texas Department of Transportation (TxDOT) specifications referred to within the project specifications are from "TxDOT 1993 Standard Specifications for Construction of Highways, Streets, and Bridges".

9. LIQUIDATED DAMAGES FOR DELAYS

It is understood and agreed between the parties hereto that time is of the essence on this Contract, and that for each day of delay beyond the stated number of days for final completion of this Contract, the Contractor shall pay to the Owner (City of Abilene) as liquidated damages for each day of such delay, the amount enumerated in Item 5, Section 16, "Time for Completion and Liquidated Damages", of General Conditions. It is understood between the parties hereto that such sum shall be treated as liquidated damages and not as a penalty, and the Owner will withhold from Contractor's final payment such sums as liquidated damages.

10. WORK HOURS

Any time the Contractor intends to work on Saturdays or after 5 P.M. on weekdays, he shall receive prior approval in writing from the Engineer for such work on those specific days. **No work will be allowed on legal holidays or Sundays except as listed below.**

When work on Saturday or overtime work is permitted, and if the nature of work is such that inspection would be required, the Contractor shall pay the Owner the composite salary, overtime pay and other overhead expenses relative to the employee designated to perform the construction inspection for a minimum of eight (8) hours even if the construction inspection lasts for a period less than eight (8) hours. For the work permitted after 5 P.M. on weekdays, the Contractor shall pay the Owner the composite salary, overtime pay, and other overhead expenses for the actual time spent by the employee designated to perform the construction inspection.

The Owner will bill the Contractor for the expenses relative to that employee's overtime work. The Contractor will be required to pay the Owner within thirty (30) calendar days from the date of billing. Contractor's failure to pay on time will result in withholding the sum from payments that become due to the Contractor.

In the sole opinion of the Engineer, if the nature of work is such that it does not require inspection, the Engineer may allow the Contractor to work on Sundays or legal holidays without inspection personnel present on the work site provided the Contractor had received prior approval to work on such days.

If work is performed on Saturdays or Sundays and/or legal holidays, whether the Owner's representative is present or not, those days will be considered as working days and would be counted towards the contract time.

11. EXISTING UTILITY LINES

It shall be the responsibility of the Contractor to contact the various utility companies to have their respective lines located on the ground. When the Contractor is working close to existing utility lines, it will be prudent to have the representative of the utilities present at the work site. It shall be the responsibility of the Contractor to arrange for the respective utility representatives present at the work site when needed. Any damages occurring to the existing utilities because of Contractor's work shall be repaired and restored by the Contractor to the complete satisfaction of the respective utility companies.

12. CONSTRUCTION TRAFFIC CONTROL

The contractor's attention is directed to Section 12 of the General Conditions entitled "Public Safety and Convenience". The traffic control, if prepared for this project, will be as indicated on the construction plans. Additional signs may be required if conditions are warranted. The costs associated with construction traffic control and construction signs are governed by specification Item 502 and the Texas Manual on Uniform Traffic Control Devices.

BID FORM

Date: _____

Bid of _____, ("Bidder"), organized and existing under the laws of the

State of _____, doing business as _____
(corporation, partnership, or individual)

To: THE CITY OF ABILENE, TEXAS

Bidder offers to perform all Work for constructing

TASA US 83/84 BIKE/PED IMPROVEMENTS

according to the Contract Documents and at the prices stated in the Bid Schedule.

Bidder acknowledges receiving Addenda: _____

Bidder certifies (if a joint bid, each party certifies as to its own organization) that this Bid has been arrived at independently and without consultation, communication or agreement with any other bidder or competitor as to any matters relating to this Bid.

Bidder offers to perform all contract work described for a lump sum total of: _____

The Bid Schedule states the lump sum, unit prices, if requested, and alternate prices.

Bidder offers to complete the project within **SIXTY (60)** working days for base bid and **ZERO (0)** working days for add alternate, which time allows for the normal delays associated with inclement weather.

BID SCHEDULE

Show bid prices in words and numerals. Words take precedence over numerals. Round off unit prices to two decimal places only. These Bid prices must include all labor, materials, equipment, insurance, overhead, superintendence, transportation, profit, and incidentals to cover the finished Work called for in the Contract Documents. *In case of mathematical error in extensions, (Unit Prices) prevails.*

BID SCHEDULE FOR TASA US 83/84 BIKE/PED IMPROVEMENTS BASE BID NOTE: Bids shall include all applicable taxes and fees.				
ITEM	ESTIMATE QUANTITY	DESCRIPTION AND UNIT PRICES (PRICE TO BE WRITTEN)	UNIT PRICE (NUMBERS)	TOTAL
100	54.73 STA	Preparing ROW at _____ DOLLARS and _____ CENTS PER STA		
104	221.5 SY	Removal of Concrete at _____ DOLLARS and _____ CENTS PER SY		
110	516 CY	Excavation at _____ DOLLARS and _____ CENTS PER CY		
420-1	16 CY	Concrete Structures (Retaining Wall) at _____ DOLLARS and _____ CENTS PER CY		
420-2	463.6 SY	Concrete Structures (Driveways) at _____ DOLLARS and _____ CENTS PER SY		
420-3	13 SY	Concrete Structures (Riprap) at _____ DOLLARS and _____ CENTS PER SY		
420-4	10.7 SY	Concrete Structures (Flume)(Cl "A") at _____ DOLLARS and _____ CENTS PER SY		
500	1.0 LS	Mobilization (NTE 5% of Bid) at _____ DOLLARS and _____ CENTS PER LS		
501	1.0 EA	Modified Curb Inlet (15') at _____ DOLLARS and _____ CENTS PER EA		
502	3.0 MO	Signs, Barricades, and Traffic Handling at _____ DOLLARS and _____ CENTS PER MO		

**BID SCHEDULE
FOR
TASA US 83/84 BIKE/PED IMPROVEMENTS
BASE BID**

NOTE: Bids shall include all applicable taxes and fees.

ITEM	ESTIMATE QUANTITY	DESCRIPTION AND UNIT PRICES (PRICE TO BE WRITTEN)	UNIT PRICE (NUMBERS)	TOTAL
529	767.2 LF	Concrete Curb and Gutter at _____ DOLLARS and _____ CENTS PER LF		
531-1	22,100 SF	Sidewalks at _____ DOLLARS and _____ CENTS PER SF		
531-2	1,070 SF	Curb Ramps at _____ DOLLARS and _____ CENTS PER SF		
531-3	207.3 SF	Steel Grate at _____ DOLLARS and _____ CENTS PER SF		
618-1	600 LF	Conduit (PVC) (SCHD 40) (2") at _____ DOLLARS and _____ CENTS PER LF		
620	600 LF	Elec Conductor (No 6) (Bare) at _____ DOLLARS and _____ CENTS PER LF		
656	7.0 EA	Ped Pole Assembly at _____ DOLLARS and _____ CENTS PER EA		
682	28 EA	Pedestrian Signal Heads (DMS 11120) at _____ DOLLARS and _____ CENTS PER EA		
684	600 LF	Traf Sig Cbl (Type 1) (16 Condr) (14 AWG) at _____ DOLLARS and _____ CENTS PER LF		
TxDOT 450	433 LF	Pedestrian Handrail at _____ DOLLARS and _____ CENTS PER LF		
TxDOT 466-1	10 CY	Parallel Wing Walls at _____ DOLLARS and _____ CENTS PER EA		
TxDOT 668-1	620 LF	Prefab Pavement Markings (Crosswalks) at _____ DOLLARS and _____ CENTS PER LF		

**BID SCHEDULE
FOR
TASA US 83/84 BIKE/PED IMPROVEMENTS
BASE BID**

NOTE: Bids shall include all applicable taxes and fees.

ITEM	ESTIMATE QUANTITY	DESCRIPTION AND UNIT PRICES (PRICE TO BE WRITTEN)	UNIT PRICE (NUMBERS)	TOTAL
TxDOT 668-2	12 LF	Prefab Pavement Markings (Stop Bar) at _____ DOLLARS and _____ CENTS PER LF		
TxDOT 668-3	1.0 EA	Prefab Pavement Markings (Yield Line) at _____ DOLLARS and _____ CENTS PER EA		
TxDOT 668-4	1.0 EA	Prefab Pavement Markings (Arrow) at _____ DOLLARS and _____ CENTS PER EA		
TxDOT 688	20 EA	Pedestrian Signal Heads Buttons at _____ DOLLARS and _____ CENTS PER EA		

TOTAL AMOUNT OF BASE BID (in words): _____

TOTAL AMOUNT OF BASE BID (in numbers): \$ _____

Respectfully submitted,

Signature

Typed or Printed Name

Title: _____

Address: _____

Telephone: _____

Federal Tax I.D. #: _____

ATTEST:

Signature

Typed or Printed Name

Title: _____

(Seal required if Bid by Corporation)

DEBARRED BIDDERS STATEMENT

The Contractor, including any of its officers or holders of a controlling interest, is obligated to inform the City of Abilene whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should the Contractor be included on such a list during the performance of this project, it shall so inform the City of Abilene.

☐ Have been listed on a United States Government debarred bidder's list.

☐ Have not been listed on a United States Government debarred bidders' list.

Date: _____

Signature: _____

RESTRICTIONS ON LOBBYING CERTIFICATION

In accordance with 31 U.S.C. Section 1352, the Contractor hereby certifies that no Federal appropriated funds have been or will be paid by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of any Federal grant or loan, the entering into the cooperative agreement and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer of Members of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit standard form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

Date: _____

Signature: _____

Title: _____

STATEMENT OF BIDDER'S QUALIFICATIONS

Answers to all questions must provide clear, comprehensive data that is not misleading. Attach additional sheets if necessary. A Bidder may submit additional information.

1. Name of Bidder and permanent main office address:

2. Date when organized under present name and State of incorporation (if applicable):

3. Former firm or trade names, with dates of operation for each name:

4. General character of work performed by your company:

5. If you have ever failed to complete any work awarded to you, state project location and reason(s), and give name and address of project owner and Engineer.

6. If you have ever defaulted on a contract, state project location, amount of contract, reason(s) and give name and address of project owner and Engineer.

7. List of similar projects successfully completed. Include amount of contract, type of work, date completed and name and address of owner. Attach additional page if needed.

8. List of current projects under contract. Include amount of contract, type of work, date completed and name and address of owner. Attach additional page if needed.

9. Upon request, fill out a detailed financial statement and furnish any other pertinent information required by the City.

CERTIFICATE OF INSURANCE OR COPY OF POLICY

The Contractor must provide either four (4) copies of an approved Certificate of Insurance or four (4) copies of the insurance policy or policies which complies with insurance provisions of the Special Conditions of the Abilene's Standard Specifications for Construction adopted September, 2006. Insurance certificates will be incorporated into the contract.

CONSTRUCTION CONTRACT

BACKGROUND

THIS CONTRACT, made _____, 20____, is between the City of Abilene, a Municipal Corporation of Taylor and Jones Counties, Texas ("City"), and _____ of the City of _____, State of Texas. ("Contractor").

The City recognizes a need for high quality construction work; the Contractor agrees to complete the project in return for payment.

THE AGREEMENT

1. Work and Consideration.

The Contractor hereby agrees to commence and complete the construction of Work described as

TASA US 83/84 BIKE/PED IMPROVEMENTS

The Contractor must provide all Work required in the Contract Documents -- incorporated herein by reference -- labeled:

TASA US 83/84 BIKE/PED IMPROVEMENTS

All work to be performed will be completed in conformance with (1) Part I and II of the City of Abilene's Standard Specifications for Construction adopted September, 2006 with the attached amendments in these Contract Documents, and (2) the Plans attached to these Contract Documents. City of Abilene specifications control over Texas Department of Transportation specifications in the event of a conflict.

In consideration of this Work, the City will pay the Contractor the sum of _____.

2. **Timely Work.** The Contractor must begin and fully complete Work in the days stated in the Notice to Proceed. The time allows for normal delays associated with weather conditions, crew coordination, etc. Time is of the essence, and liquidated damages as set forth in the General Conditions (Paragraph 16) apply for late Work.

3. **Payment.** If Performance and Payment Bonds are required, the City will pay Contractor according to the General Conditions (Paragraph 20). If Performance and Payment Bonds are not required, the City will pay Contractor according to the Instructions to Bidders.

4. **No liens.** No mechanic, contractor, subcontractor, supplier, or other person can or will contract for, or in any other manner have or acquire any lien upon the work of this Contract, or the land upon which it is situated. The laws of the State of Texas govern this Contract.

5. **Venue.** Venue for any legal proceeding is Taylor County, Texas.

6. **Indemnity.**

A. Definitions

For the purpose of this section the following definitions apply:

"City" shall mean all officers, agents and employees of the City of Abilene.

"Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

"Contractor" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

"Contractor's employees" shall mean any employees, officers, agents, subcontractors, licensee and invitees of Contractor.

"Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:

- (i) injury or damage to any property or right
- (ii) injury, damage, or death to any person or entity
- (iii) attorneys fees, witness fees, expert witness fees and expenses, and
- (iv) all other costs and expenses of litigation

"Premise Defects" shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

"Proven" shall mean that a court of competent jurisdiction has entered a final unappealable judgment on a claim adjudging an entity or person liable for a monetary judgment.

"Sole negligence" shall mean negligence of a party that is unmixed with the fault of any other person or entity.

B. Indemnity

The Contractor must indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Contractor's work and activities conducted in connection with this Contract.

The Contractor is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the City.

Contractor must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Contractor's employees while in the vicinity where the work is being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Contractor or Contractor's employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects. Responsibility for all such defects is expressly assumed by the Contractor.

The City and Contractor must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Contractor or City. The City has the right to compromise and defend the same to the extent of its own interests.

BOTH CITY AND CONTRACTOR EXPRESSLY INTEND THIS CONTRACT'S INDEMNITY PROVISION TO REQUIRE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE WHILE CITY IS PARTICIPATING IN THIS CONTRACT, WHERE

THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE DAMAGES. THIS CONTRACT'S INDEMNITY PROVISION DOES NOT APPLY TO ANY CLAIM WHERE DAMAGE IS PROVEN TO RESULT FROM THE SOLE NEGLIGENCE OF THE CITY.

7. **Insurance.** The Special Conditions found the City of Abilene's Standard Specifications for Construction adopted September, 2006, Part I, Division I, Item 3, contain the insurance requirements of this Contract.

8. **Overcharges.** The Contractor assigns to City any claims for overcharges related to this Contract which arise under antitrust laws of the United States, 15 U.S.C.A. Sec. 1 et seq., as amended.

9. **Contract Interpretation.** Any dispute about the Contract's meaning or application will be interpreted fairly and reasonably, and neither more strongly for or against either party.

10. **Indebtedness to City.** Contractor agrees that no payments owed by him of any nature whatsoever to the City, including payment in advance for service charges or any sums of any character whatsoever, shall become delinquent or in arrears.

The City will not knowingly award contracts for goods or services to any Bidder in arrears to the City for any debt, claim, demand, or account whatsoever, including taxes, penalty or interest. Contractor is responsible for ensuring that no indebtedness exists.

Section 130 of the City Charter authorizes the City to counterclaim and offset any debt, claim, demand or account owed by the City to any person, firm or corporation in arrears to the City for any debt, claim, demand or account of any nature whatsoever, including taxes, penalty or interest.

11. **Boycott of Israel.** In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

12. **Contract Execution.** The Contractor must sign the Contract first, with any necessary attestation and seal. The City Attorney or designee must review the Contract, and approve or disapprove it. If approved, the City's authorized agent will then sign. The City Secretary must keep a signed original in the City Secretary's Office.

13. **Contract Copies.** Each of the two executed copies is an original.

IN WITNESS HERE OF, the parties hereto have executed this contract:

CONTRACTOR

Name of Contractor:

Business Address:

Signature

Name - Typed or Printed

Business Phone No.

Title - Typed or Printed

Federal Tax I.D.#

ATTEST: (If Corporation)

Corporate Secretary's Signature

Corporate Seal
(if none, write "None")

CITY OF ABILENE

Authorized Signature

APPROVED:

City Attorney

ATTEST:

City Secretary

Seal:

STATUTORY PERFORMANCE BOND

STATE OF TEXAS

§
§
§
§

STATUTORY PERFORMANCE BOND
PURSUANT TO TEX. GOV'T CODE ANN.
Section 2253.021 (Vernon 1994)

COUNTY OF TAYLOR

as Principal(s), and

as Surety(s) are bound to the City of Abilene, Texas, ("Obligee") in the sum of \$ _____ lawful money of the United States. By this document, they bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, to pay this amount.

On _____, 20__, the Principal entered into a written contract with the Obligee for

TASA US 83/84 BIKE/PED IMPROVEMENTS

which contract is incorporated by reference for all purposes. The Principal is required by law to execute a bond in the contract amount before beginning work.

If the Principal faithfully performs the work according to the Contract Documents, including any performance required of the Principal for a period of one year after the date of final acceptance of the work, under guarantees furnished the Obligee, then this obligation is void; otherwise, it remains in full force.

This bond is executed under the provisions of TEX. GOV'T CODE ANN. § 2253.001, *et. seq.* (Vernon 1994), as amended, and all liabilities on this bond shall be determined according to the provisions of that Code.

Surety, for value received, stipulates that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway affect its obligation on this bond, and it waives notice of any such change, extension of time, alteration, or addition to the terms of the contract, or to the work performed thereunder.

We, Principal(s) and Surety(s), have signed and sealed this instrument:

_____, 20__

(Principal)

By:

(Signature)

(Name - typed)

(Title - typed)

The undersigned surety company represents that it is authorized to do business in Texas, and designates _____ its agent in Taylor County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship. Surety consents to venue in Taylor County, Texas.

_____, 20__

(Surety)

(Signature of Attorney-in-Fact)

By:

(Signature)

(Typed Name of Attorney-in-Fact)

SURETY'S SEAL

NOTE: If signed by an officer of the Surety Company, the Surety Company must submit a certified extract from the by-laws showing that this person has authority to sign the bond. If signed by an Attorney-in-Fact, a copy of the Power of Attorney must be attached to this bond.

(Note: Date of Bonds must not be before Contract date)

STATUTORY PAYMENT BOND

STATE OF TEXAS

§
§
§
§

STATUTORY PAYMENT BOND
PURSUANT TO TEX. GOV'T CODE ANN.
Section 2253.021 (Vernon 1994)

COUNTY OF TAYLOR

as Principal(s), and _____

as Surety(s) are bound to the City of Abilene, Texas, ("Obligee") in the sum of \$ _____ lawful money of the United States. By this document, they bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, to pay this amount.

On _____, 20__, the Principal entered into a written contract with the Obligee for

TASA US 83/84 BIKE/PED IMPROVEMENTS

which contract is incorporated by reference for all purposes. The Principal is required by law to execute a bond in the contract amount before beginning work.

If the Principal pays all claimants supplying labor and material to Principal or a subcontractor in the performance of the work provided for in the contract, then this obligation is void; otherwise, it remains in full force.

This bond is executed under the provisions of TEX. GOV'T CODE ANN. § 2253.001, *et. seq.* (Vernon 1994), as amended, and all liabilities on this bond will be determined according to the provisions of that Code.

Surety, for value received, stipulates that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract, or to the work performed thereunder.

We, Principal(s) and Surety(s), have signed and sealed this instrument:

_____, 20__

(Principal)

By:

(Signature)

(Name - typed)

(Title - typed)

The undersigned surety company represents that it is authorized to do business in Texas, and designates _____ its agent in Taylor County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship. Surety consents to venue in Taylor County, Texas.

_____, 20__

(Surety)

(Signature of Attorney-in-Fact)

By:

(Signature)

(Typed Name of Attorney-in-Fact)

SURETY'S SEAL

NOTE: If signed by an officer of the Surety Company, the Surety Company must submit a certified extract from the by-laws showing that this person has authority to sign the bond. If signed by an Attorney-in-Fact, a copy of the Power of Attorney must be attached to this bond.

(Note: Date of Bonds must not be before Contract date)

MAINTENANCE BOND

STATE OF TEXAS	§	MAINTENANCE BOND PERSUANT TO CITY
	§	OF ABILENE LAND DEVELOPMENT CODE
	§	3.1.8.6
COUNTY OF TAYLOR	§	

That _____, hereinafter called "Principal", and _____, a corporation organized and existing under the laws of the State of _____ and licensed to transact business in the State of Texas, hereinafter called "Surety", are held and firmly bound unto the CITY OF ABILENE, TEXAS, a home rule municipal corporation hereinafter called "Beneficiary", in the amount

DOLLARS (\$ _____), in lawful money of the United States, to be paid in Abilene, Taylor County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors and assigns, jointly and severally, and firmly by these presents. This bond shall automatically be increased by the amount of any change order or supplemental agreement which increases the Contract price, but in no event shall a change order or supplemental agreement which reduces the Contract price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain written Contract with the Beneficiary, dated the _____ day of _____, _____, A.D. which is made a part hereof by reference for the construction of certain public improvements that are generally described as follows:

NOW, THEREFORE, if Principal will maintain and keep in good repair the work herein contracted to be done for a period of one (1) year from the date of final acceptance and do and perform all necessary work and repair any defective condition, it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective materials, work or labor performed by Principal; then this obligation shall be void, otherwise it shall remain in full force and effect; and in case Principal shall fail to do so it is agreed that the City may do such work and supply such materials and charge the same against Principal and Surety on this obligation.

PROVIDED, FURTHER, that if any legal action be filed on this Bond, exclusive venue shall lie in Taylor County, Texas.

PROVIDED FURTHER, that Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work performed thereunder, or the plans, specifications, drawings, etc. accompanying same shall in any way affect its obligation on this Bond; and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder.

The undersigned and designated agent is hereby designated by Surety as the resident agent in Taylor County to whom all requisite notice may be delivered and on who service of process may be had in matters arising out of this suretyship.

We, Principal(s) and Surety(s), have signed and sealed this instrument:

_____, 20__

(Principal)

By:

(Signature)

(Name – typed)

(Title – typed)

The undersigned surety company represents that it is authorized to do business in Texas, and designates _____ its agent in Taylor County to who any requisite notices may be delivered and on whom service of process may be had in any matters arising out of such suretyship. Surety consents to venue in Taylor County, Texas.

_____, 20__

(Surety)

(Signature of Attorney-in-Fact)

By:

(Signature)

(Typed Name of Attorney-in-Fact)

SURETY'S SEAL

NOTE: If signed by an officer of the Surety Company, the Surety Company must submit a certified extract from the by-laws showing that this person has authority to sign the bond. If signed by an Attorney-in-Fact, a copy of the Power of Attorney must be attached to this bond.

(Note: Date of Bonds must not be before Contract date)

NOTICE OF AWARD

TO: _____

DATE: _____

PROJECT DESCRIPTION:

TASA US 83/84 BIKE/PED IMPROVEMENT

The City of Abilene has considered your Bid response to the Invitation for Bids dated _____, 20__, for the project listed above.

The City of Abilene accepts your Bid in the amount of _____.

The Instructions to Bidders require you to execute the Contract and furnish applicable bonds and insurance documents within 15 days from the date of this Notice of Award. If you fail to timely fulfill these obligations, the City is entitled to regard your failure as a forfeiture of any rights which might arise by the City's accepting your Bid.

You must return a signed copy of this Notice of Award to the City.

ACCEPTANCE OF NOTICE

THE CITY OF ABILENE, TEXAS

Date: _____

Contractor acknowledges
receiving the Notice of Award.

By: _____

(Signature)

By: _____

(Signature)

Name-Typed or Printed

Title: _____

Name - Typed or Printed

Title: _____

Federal Tax ID #: _____

NOTICE TO PROCEED

To: _____

Date: _____

PROJECT DESCRIPTION: **TASA US 83/84 BIKE/PED IMPROVEMENT**

You are to begin work on this project on or before _____, and to complete the work within **SIXTY (60)** consecutive working days for Base Bid and **ZERO (0)** consecutive working days for Add Alternate.

You must complete all work on or before _____, 20__.

You must return a signed copy of this Notice to Proceed to the City.

THE CITY OF ABILENE, TEXAS

By: _____
(Signature)

Name-Typed or Printed

Title: _____

Date: _____
Contractor acknowledges
receiving the Notice to Proceed.

By: _____
(Signature)

Title: _____

Federal Tax ID #: _____

CHANGE ORDER



CITY OF ABILENE

CHANGE ORDER NUMBER: _____

1. CONTRACTOR: _____

2. Change Order Work Limits: Sta. _____ to Sta. _____

3. Type of Change: _____ (Major/Minor)

4. Reasons: _____

5. Describe the work being revised: _____

6. New or revised plan sheet(s), sketch(es), and estimates are attached:

Each signatory hereby warrants that each has the authority to execute this Change Order (CO).

<p>The contractor must sign the Change Order and, by doing so, agrees to waive any and all claims for additional compensation due.</p> <p>THE CONTRACTOR Date _____</p> <p>(Signature) _____</p> <p>Typed/Printed Name _____</p> <p>Typed/Printed Title _____</p>	<p><i>The following information must be provided:</i></p> <p>Change in contract time: _____</p> <p>Original contract price: _____</p> <p>Existing contract price: * _____</p> <p>Amount added or subtracted by this CO: _____</p> <p>Revised contract price: _____</p> <p>* Includes previous CO's</p>
--	--

RECOMMENDED FOR EXECUTION:

Inspection Services Manager Date

City Engineer's Seal:

City Engineer Date

Director Date

AFFIDAVIT OF BILLS PAID



AFFIDAVIT OF BILLS PAID

Contractor: _____

Project Number: _____

Project Description: _____

This is to certify that the above project was accepted on _____ and that all bills for labor, materials and incidentals incurred on this Contract have been paid in full, discharged, or waived and that I know of no claims pending. I am also aware that the City may request additional evidence to its satisfaction. I am also aware that the City may, after notifying the Contractor, either pay unpaid bills or withhold from the Contractor's compensation a reasonable sum of money sufficient to pay all lawful claims until the Contractor furnishes satisfactory evidence that all liabilities have been discharged.

THE CONTRACTOR:

Company Name

Company Authorized Signature

Date

Notary Public, State of Texas

Printed Name

Date

(Seal)

RECOMMENDED APPROVAL:

City Engineer

Date

TECHNICAL SPECIFICATIONS

The following **specifications** from City of Abilene's Standard Specifications for Construction adopted September, 2006, Part II Technical Specifications, are incorporated into these Contract Documents by reference.

(Available from the City of Abilene Accounting Department for \$25.00 + tax)

Items 1-37	General Provisions
Item 100	Preparation of Right of Way
Item 104	Removal of Concrete
Item 110	Excavation
Item 420	Concrete Structures
Item 500	Mobilization
Item 501	Curb Inlet
Item 502	Barricades, Signs and Traffic Handling
Item 529	Curb and Gutter
Item 531	Sidewalk
Item 618	Conduit
Item 656	Pedestrian Pole Assembly
Item 682	Pedestrian Signal System
Item 684	Traffic Signal Cable

TxDOT Specification

Item 450	Pedestrian Handrail
Item 466	Parallel Wing Walls
Item 668	Prefabricated Pavement Markings
Item 688	Pedestrian Detectors

TxDOT Departmental Materials Specification

DMS 11131	Pedestrian LED Countdown Signal Modules
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Required Contract Provisions – Federal-Aid Construction Contracts (Provided):

Form FHWA-1273 (Rev. 5-12)

Child Support Statement for the Texas Department of Transportation for Negotiated Contracts and Grants

2014 TxDOT Special Provisions:

000-001	Schedule of Liquidated Damages
000-002	Nondiscrimination
000-003	Certification of Nondiscrimination in Employment
000-004	Notice of Requirement for Affirmative Action to Ensure Equal
000-005	Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)
000-007	Disadvantaged Business Enterprise in Federal Aid Contracts

2004 TxDOT Special Provisions:

000-003	Notice to All Bidders
002-017	Instructions to Bidders

GENERAL CONDITIONS

2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

The Engineer may furnish the Contractor additional instructions and detail drawings as necessary to carry out the Work. These are part of the Contract Documents. The Contractor must complete the Work accordingly.

3. SCHEDULES, REPORTS, AND RECORDS

3.1 The Contractor must submit to the City schedules of quantities and costs, progress schedules, payrolls, reports, estimates, records, and other data as required by the Contract Documents.

3.2 Before the first partial payment estimate, the Contractor must submit construction progress schedules showing the order in which he proposes to carry on the Work, including dates at which he will start the various parts of the Work, estimated date of completion of each part and, as applicable:

3.2.1 The dates special detail drawings are required; and,

3.2.2 Respective dates for submission of Shop Drawings, the beginning of manufacture, the testing, and the installation of materials, supplies, and equipment.

3.3 The Contractor must submit a proposed schedule of payments for Work accomplished.

4. DRAWINGS AND SPECIFICATIONS

4.1 Drawings and Specifications inform the Contractor of the scope of the Work. The Contractor must furnish all labor, materials, tools, equipment, and transportation necessary to properly execute the Work as well as all incidental work necessary to complete the Project in an acceptable manner, ready for use, occupancy, or operation by the City.

4.2 In case of conflict between the Plans and Specifications, the Plans take precedence. Figure dimensions on Drawings shall govern over scale dimensions, and detailed Drawings govern over general Drawings.

4.3 The Contractor must immediately report any discrepancies between the Drawings and Specifications and site conditions, or any inconsistencies or ambiguities in the Drawings or Specifications, to the Engineer, in writing, who must promptly correct them in writing. Work done by the Contractor after discovering discrepancies, inconsistencies or ambiguities is done at the Contractor's risk.

5. SHOP DRAWINGS

5.1 The Contractor must provide Shop Drawings necessary to complete the Work. The Contractor must certify these Shop Drawings were reviewed, checked and approved by the Contractor and that they meet Contract Document requirements. The Engineer must promptly review all Shop Drawings.

5.2 The Engineer's approval of any Shop Drawing does not release the Contractor from responsibility for deviations from the Contract Documents. Change Orders are required to approve any substantial deviation from the Contract Documents.

5.3 The Contractor may not begin portions of the Work requiring a Shop Drawing or sample submission until the Engineer has approved it. The Contractor must keep a Copy of each approved Shop Drawing and each approved sample at the site, readily available to the Engineer.

6. MATERIALS, SERVICES, AND FACILITIES

6.1 The Contractor must provide and pay for all materials, services and facilities of any nature—including labor, tools, equipment, water, light, power, transportation, supervision, insurance, temporary construction of any nature—necessary to execute, complete, and deliver the Work within the specified time, unless otherwise specifically stated in the Contract Documents.

6.2 Contractor must store materials and equipment to preserve their quality and fitness for the Work and to allow prompt inspection by City or Engineer.

6.3 Contractor must apply, install, connect, erect, use, clean and condition all manufactured articles, materials, and equipment as directed by the manufacturer.

6.4 Contractor must use materials, supplies, and equipment which match samples submitted by the Contractor and approved by the Engineer.

6.5 Contractor and Subcontractor must not purchase materials, supplies, and equipment to be incorporated into the Work subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

6.6 The Contractor must arrange for construction water. For information regarding the use of City water for construction purposes, contact the City's Water Department, 676-6406. If a City meter is used, the Contractor is solely responsible for maintenance for all water use and for prompt payment of the account. Construction meters are not allowed if the City is in Stages 3-5 of the Drought Contingency Plan.

6.7 If, due to the Work, dust becomes a nuisance, the Contractor is solely responsible for controlling it by spraying the area with water or dilute solution of calcium chloride on a regular basis. The Engineer may notify the Contractor that the dust is a nuisance. If the Contractor then fails to control it, the City may pay for additional dust control and bill those expenses to the Contractor. The Contractor must then pay the City within 30 days following receipt of bill.

6.8 The Contractor must comply with OSHA regulations in providing and maintaining adequate toilet facilities for the workers during construction.

7. INSPECTION AND TESTING

7.1 All materials and equipment used in constructing the Project are subject to adequate inspection and testing under generally accepted standards, as required and defined in the Contract Documents.

7.2 The Contractor bears the expense of testing and inspection services required by the Contract Documents. The City provides all inspection and testing services not required by the Contract Documents.

7.3 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than the Contractor, the Contractor must give the Engineer timely notice of readiness. The Contractor must furnish the Engineer the required certificates of inspection, testing, or approval.

7.4 Inspections, tests, or approvals by the Engineer or others does not relieve the Contractor from correctly performing the Work. It is his total responsibility whether there is an Inspector present or not.

7.5 The Engineer and designated representatives have access to the Work at all times. In addition, authorized representatives and agents of any participating Federal or state agency are permitted to inspect all Work, materials, payrolls, personnel records, invoices of materials, and other relevant data and records. The Contractor must provide proper facilities for access, observation, inspection and testing of the Work.

7.6 The Contractor must uncover, at the Engineer's request, and at Contractor's expense, any Work covered contrary to the written instructions of the Engineer.

7.7 The Engineer may notify the Contractor to uncover Work for observation, inspection, or testing by others. The Contractor must furnish all labor, materials, tools, and equipment to uncover the Work. If the Work is defective, the Contractor bears all related expenses, including uncovering, exposing, observing, inspecting and testing, and of satisfactory reconstruction. If, however, the Work is not defective, the City must allow the Contractor an increase in Contract Price or an extension of the Contract Time, or both, directly attributable to Work under this provision. The City will issue an appropriate Change Order.

8. SUBSTITUTIONS

8.1 Whenever a material, article, or piece of equipment is identified on the Drawings or Specifications by reference to brand name or catalogue number, this reference defines the minimum performance standard. The City will consider other products of equal capacities, quality and function. The Contractor may recommend substituting a material, article, or piece of equipment, and if, in the Engineer's opinion, the suggested substitute is of equal capacity, quality, and function to that specified, the Engineer may approve its substitution and use.

8.2 The City will modify the Contract Documents by Change Order to reflect any cost differential for an approved substitute. The City will not change the Contract Price or Contract Time to accommodate incidental changes or extra component parts required by substitution. The Contractor specifically warrants that, if substitutes are approved, no changes in the function or general design of the Project will result.

9. PATENTS

The Contractor must pay all applicable royalties and license fees. The Contractor must defend all suits or claims for infringement of any patent rights and save the City harmless from loss on that account, except that the City is responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified; however, if the Contractor has reason to believe that the design, process or product specified may be a patent infringement, the Contractor is responsible for such loss unless written notice is promptly given to the Engineer.

10. SURVEYS, PERMITS, AND REGULATIONS

10.1 The City must furnish all boundary surveys and establish all base lines for locating the principal component parts of the Work, together with a suitable number of bench marks adjacent to the Work. From this information, unless otherwise specified, the Contractor must develop and make all detailed surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets. The Contractor must have a person that is trained to perform this type of surveying and he must be equipped with modern surveying instruments. The surveyor and equipment will be approved by the Engineer.

10.2 The Contractor must carefully preserve bench marks, reference points and stakes. The Contractor is responsible for mistakes caused by Contractor's willful or careless destruction, loss, or disturbance of the bench marks, reference points, and stakes and must pay for all resulting expenses.

10.3 The Contractor must secure and pay for any permits and licenses of a temporary nature necessary for the Work, unless otherwise specified. The City must secure and pay for any permits, licenses and easements for permanent structures or permanent changes in existing facilities, unless otherwise specified. The Contractor must give all notices and comply with all laws, ordinances, rules and regulations relating to the Work. The Contractor must promptly notify the Engineer in writing of any variances between these and the Contract Documents. The City will issue any necessary Change Orders.

If the Work involves right-of-way belonging to TxDOT, the Contractor must verify TxDOT's requirements before bidding. No separate pay item will be included for the Contractor's conforming with TxDOT's requirements, and no adjustments in the Contract Price will be made if TxDOT requires work which differs from the Contract Documents.

11. PROTECTION OF WORK, PROPERTY, AND PERSONS

11.1 The Contractor is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor must take all necessary precautions for the safety of, and provide the necessary protection to prevent damage, injury or loss to, all employees on the Work and other persons who may be affected; all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the construction.

11.2 The Contractor must comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The Contractor must notify owners of adjacent utilities when the Work may affect them. The Contractor must expeditiously remedy to the City's satisfaction all damage, injury, or loss to any property caused directly or indirectly, in whole or in part, by the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them is liable, except damage or loss solely attributable to the fault of the Contract Documents or to the acts or omissions of the City, the Engineer or anyone for whose acts either of them is liable.

11.3 The Contractor must comply with all pertinent provisions of the "Manual of Accident Prevention in Construction", issued by the Associated General Contractors of America, Inc., and must maintain an accurate record of all cases of death, occupational disease and injury requiring medical attention or causing loss of time from Work arising out of and in the course of employment or Work under this Contract. The Contractor is solely responsible for the safety, efficiency, and adequacy of plans, equipment, and methods and for any damage which may result from their failure or from improper construction, maintenance or operation.

11.4 The City has the right to enter the premises for the purpose of doing Work not covered by the Contract Documents. This provision does not relieve the Contractor of the sole responsibility for the care and protection of the Work, or the restoration of any damaged Work except as may be caused by agents or employees of the City.

11.5 In emergencies affecting the safety of persons, or the Work, or property at or adjacent to the site, the Contractor, without special instruction or authorization from the Engineer or City, must act to prevent threatened damage, injury, or loss. He must give the Engineer prompt Written Notice of any significant changes in the Work or deviations from the Contract Documents caused

by the emergency and action. The City will issue a Change Order, if necessary, covering the changes and deviations.

12. PUBLIC SAFETY AND CONVENIENCE

12.1 The Contractor must conform to the Contract standards and, if on State roads, to all requirements of the Standard Specifications for Construction of Highways, Streets and Bridges published by the TxDOT. The Contractor must keep all equipment and materials used to comply with this section clean and in good repair. The Contractor retains possession of all devices furnished by Contractor solely to comply with this section, unless otherwise noted. The Contractor must remove these devices from the site when no longer required.

12.2 The Contractor must allow all public vehicular and pedestrian traffic to pass through or around the Contractor's Work sites with a minimum of delay.

The Contractor must not store materials or equipment in locations that interfere with vehicular or pedestrian traffic safety. At the end of each working day, and at other times when Work is suspended for any reason, the Contractor must remove all debris, equipment, materials and other obstructions from all roadways and pedestrian ways which are open to traffic.

The Contractor must furnish, install and maintain flagmen, barricades, lights, signs, flashers, signals, fences, and other devices to control vehicular and pedestrian traffic in the Work site as are necessary to ensure the safety and facilitate the convenience of the public. This requirement may not be specifically enumerated in the Contract Documents. All traffic control devices must meet the requirements of the Texas Manual on Uniform Traffic Control Devices for Streets and Highways published by the TxDOT.

When the Contractor assigns flagmen, their sole responsibility is to direct public traffic through and around the Work. The flagmen must have no other duties.

The Contractor must provide written notice to the Engineer whenever operations will cause any traffic signal to be inoperative. The Engineer must receive this notice at least 48 hours before the time when the signal will become inoperative. The Contractor must hire off-duty Abilene policemen to control traffic at the affected intersections in all cases.

12.3 The Contractor must furnish, install and maintain such barricades, fences, railings, signs, warning lights, safety helmets, and other devices necessary for the general safety of both the public and workmen on and around the Work sites.

The Contractor must immediately remove any spillage caused by the operations on any street, sidewalk or pedestrian way.

12.4 The Contractor must minimize inconvenience to, and obstruction of, the public. The Contractor must not have under construction more Work than can reasonably and effectively be done at one time.

The Contractor must minimize adverse effects of the Work on adjoining property owners. The Contractor must keep each intersection roadway and driveway open to traffic, unless the Engineer specifically approves otherwise.

12.5 Contractor must maintain all existing traffic signals, traffic signal systems, school speed limit beacons, hazard identification beacons, flashing beacons, sign beacons and street and highway lighting systems in effective operation, to the extent possible, for the duration of the Work. The City will maintain these facilities until the Contractor modifies them; at that time, the Contractor is responsible for maintaining them. However, the City will replace signal lamps as needed, unless the Contractor's operations damage the lamps.

The City will initially respond to reported problems and failures and replace apparently malfunctioning or questionable equipment at the complete unit level (not at the module or more discrete levels), if the Contractor furnishes the City with sufficient spare equipment for this purpose. When the City does not receive sufficient spare equipment, when replacement at the unit level does not correct the problem, or when the cause of the trouble or failure is not immediately apparent to City personnel, the Contractor must respond to the site with a qualified technician immediately upon request of the City.

12.6 If the Contractor appears neglectful in carrying out these safety requirements, the Engineer may notify the Contractor verbally or in writing. The Contractor must immediately correct the situation. If the Contractor fails or neglects to install and maintain any device required to fulfill the requirements of this section, the City may have the devices installed or maintained and then charge the cost of this work to the Contractor.

The Engineer has authority to stop the Contractor from proceeding with the Work at any location where, in the Engineer's judgment, the Contractor has not adequately provided for safety or for the convenience of the public. Such action by the Engineer does not entitle the Contractor to any additional compensation or justify any claim for additional Contract Time or waive any liquidated damages.

12.7 The Contractor is solely responsible for conducting operations in a safe manner and with a minimum of inconvenience to the public. Action, or inaction, by the City or Engineer does not relieve the Contractor of any responsibility or liability incurred under this Contract.

12.8 Unless otherwise specifically noted, the requirements of this section are incidental to the Work and no direct payment will be made for them.

13. SUPERVISION BY CONTRACTOR

13.1 The Contractor must supervise and direct the Work. The Contractor is solely responsible for the means, methods, techniques, sequences and procedures of construction.

13.2 The Contractor must employ and maintain on the Work a qualified supervisor or superintendent, designated in writing by the Contractor as the Contractor's representative at the site. The supervisor must have full authority to act on behalf of the Contractor. All communications given to the supervisor are as binding as if given to the Contractor. The supervisor must be present on the site at all times as required to adequately supervise and coordinate the Work.

14. CHANGES IN THE WORK

14.1 The City may at any time, as the need arises, order changes within the scope of the Work without invalidating the Contract. If such changes increase or decrease the amount due under the Contract Documents, or in the time required for performance of the Work, the City will issue a Change Order authorizing an equitable adjustment.

14.2 The Engineer may at any time change the details of the Work by issuing a Field Order.

The Contractor must give the Engineer Written Notice within seven days of receiving the Field Order if the Contractor intends to request a Change Order. The Contractor has 30 days to submit documentation for the requested change. The Contractor must not execute the questioned Field Order change until receiving a Change Order or other instruction.

If the Field Order change does not require a Change Order, the Contractor must proceed with the changes in the Work as instructed by the Engineer.

15. CHANGES IN CONTRACT PRICE

15.1 The Contract Price may be changed only by a Change Order. The value of any Work covered by a Change Order or of any claim for increase or decrease in the Contract price is determined by one or more of the following methods in the order of precedence listed below:

- (a) Unit prices previously approved
- (b) An agreed lump sum

16. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

16.1 The Work's beginning and completion dates are essential conditions of the Contract Documents. The Work must begin as stated in the Notice to Proceed.

16.2 The Contractor must proceed with the Work at a rate of progress to ensure full completion within the Contract Time. The Contractor and City expressly agree that the Contract Time for completing the Work is a reasonable time, considering the average climatic and economic conditions and other factors prevailing in the locale.

16.3 Because time is of the essence of this contract, liquidated damages apply to its performance. For each working day that any Work remains uncompleted after the final completion time as stated in the Notice to Proceed, the City will deduct the amount shown in TxDOT special provision 000-001 from money due or to be due to the Contractor:

The Engineer may mandate a specific amount other than shown above on high priority and/or special projects.

The sums of money deducted for failure to complete any portions of the Work on time are not a penalty, but are reasonable liquidated damages, per working day, for defaulting on the contracted final completion time. The City and Contractor agree to fixed amounts because it is impracticable and extremely difficult to ascertain actual damages the City would sustain. The Contractor or Contractor's Surety must promptly pay any additional amounts if the amount the City can withhold from money due the Contractor does not cover the amount of liquidated damages.

16.4 The City will not charge the Contractor with liquidated damages or any excess cost when the Contractor has given prompt Written Notice to the City or Engineer, and the City confirms, that the delay in completion of the Work is due:

- 16.4.1 To any preference, priority or allocation order issued by the City.
- 16.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including acts of God, of the public enemy, of the City, of another Contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and
- 16.4.3 To any delays of Subcontractors caused by the same occurrences listed above.

17. CORRECTION OF WORK

17.1 The Contractor must promptly remove from the premises all Work rejected by the Engineer for failure to comply with the Contract Documents, whether incorporated in the construction or not. The Contractor must promptly replace and re-execute the Work without expense to the City. The Contractor must pay for making good all Work of other Contractors destroyed or damaged by such removal or replacement.

17.2 If the Contractor does not take action to remove rejected Work within ten days after receipt of Written Notice, the City may remove such Work and store the materials at Contractor's expense.

18. SUBSURFACE CONDITIONS

18.1 The Contractor must promptly, and before disturbing conditions, except in the event of an emergency, give Written Notice to the City of:

18.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or

18.1.2 Unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in similar work.

18.2 The City will promptly investigate the conditions. If the City determines the conditions do materially differ and cause an increase or decrease in the cost of, or in the time required for, the Work, the City will make an equitable adjustment to the Contract Documents by Change Order.

18.3 Although the City is not obligated to make any adjustment if the Contractor fails to give the required Written Notice, the City may make an adjustment it considers justified if the Contractor requests one before the date of final payment.

19. SUSPENSION OF WORK, DEFAULT, TERMINATION, AND DELAY

19.1 The City may suspend any of the Work no more than 90 days, or longer with Contractor agreement, by Written Notice to the Contractor and the Engineer. This notice, or a subsequent one, will notify them of the mandatory date to resume Work. The City will allow the Contractor an extension of the Contract Time directly attributable to the City's suspension.

19.2 **CONTRACTOR DEFAULT.** The City may declare the Contractor to be in default if the Contractor violates any provision of the Contract Documents. The City will give the Contractor and its Surety 10 days Written Notice to cure any contract violation. After such 10 day notice, the City may declare the Contractor in default and/or terminate the Contract and finish the Work as expediently as possible.

Any of the following Contractor actions will subject the Contractor to default and/or termination:

If the Contractor:

- (a) Repeatedly fails to supply sufficient skilled workmen, suitable materials or equipment to the site;
- (b) Repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment;
- (c) Disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the Work;
- (d) Disregards the authority of the Professional Consultant;
- (e) Fails to complete the job on time;
- (f) Fails or refuses to remove rejected materials, equipment or supplies;
- (g) Fails or refuses to remedy any defective or unacceptable work;

- (h) Fails or refuses to provide proper materials, equipment or supplies;
- (i) Is adjudged as bankrupt or insolvent;
- (j) Makes a general assignment for the benefit of Contractor's creditors;
- (k) Has a trustee or receiver appointed for the Contractor or for any of Contractor's property;
- (l) Files a petition to take advantage of any debtor's act, or to be reorganized under the bankruptcy or applicable laws; or
- (m) Otherwise violates any provision of the Contract Documents.

19.2.1 This remedy is in addition to any other rights or remedies the law allows the City.

19.2.2 In any action under this provision, the City will not pay the Contractor any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for additional professional services, the City will pay the excess to the Contractor. If the costs exceed the unpaid balance, the Contractor must pay the difference to the City. The Engineer will determine the amount of the costs and include them in a Change Order.

19.3 The City may, without cause and without prejudice to any other right or remedy, abandon the Project and terminate the Contract ten days after sending Written Notice to the Contractor and the Engineer. The City may negotiate with the Contractor to complete a set amount of the Project before stopping work. In either case, the City will pay the Contractor for all Work executed and any expenses sustained plus reasonable profit.

19.4 Termination by the City does not affect any right of the City against the Contractor then existing or which may thereafter accrue. The City's decision to retain or pay money due the Contractor does not release the Contractor from complying with the Contract Documents.

19.5 The Contractor may terminate the Contract and recover payment from the City for all work executed and related expenses if, through no act or fault of the Contractor:

- (a) the Work is suspended for more than 90 days by the City, by court order, or by order of other public authority;
- (b) the Engineer fails to act on any request for payment within 30 days after submission;
- (c) the City, within 30 days of presentation by the Engineer, fails to pay the Contractor a substantial amount of the approved sum.

The Contractor must give the City and Engineer Written Notice of the intent and reason(s) to terminate. The City and Engineer have ten days from receiving the Written Notice to correct the stated problem.

19.6 The Contractor and the City may mutually agree to complete certain work under this Contract even after notice of termination has been received. In that event, City will reasonably compensate Contractor for the completed work.

19.7 The Contractor may temporarily stop Work, after giving ten days Written Notice to the City and Engineer, if:

- (a) the Engineer has failed to act on a request for payment; or

(b) the City has failed to pay substantially the amount approved by the Engineer.

The Contractor must resume Work promptly upon correction of the problem. The City will issue Change Orders, if necessary, to adjust the Contract Price or extend the Contract Time to compensate for the Work stoppage.

19.8 The City must issue Change Orders to adjust the Contract Price or extend the Contract time to compensate for any costs or delays caused by the City's or the Engineer's failing to act within a time specified in the Contract Documents, or if no time is specified, within a reasonable time.

20. PAYMENTS TO CONTRACTOR AND MEASUREMENT

20.1 One time each month the Engineer will make an estimate, in writing, of the materials in place and the work performed. The value of said work will be computed by using the Unit bid price times the quantity of work performed. The cut off date shall be the last day of the preceding month.

20.2 Payment of "material on hand, not in place," the Contractor must have invoice; material shall be located on the Contractor's property, and must meet the City of Abilene's specifications. The Contractor will be paid the invoice price and then deducted from "material on hand" and added to the completed Item for payment.

20.3 Partial payments for "material on hand" and in acceptable storage, shall not exceed the unit bid price. A payment for the monthly Estimate will be made within 10 days from the end of the month.

20.4 Within the first 15 days of each calendar month, the City will make partial progress payments to the Contractor for Work actually performed during the preceding calendar month on a written estimate certified by the Contractor, provided that the City, except as otherwise provided by law, will retain five percent of each approved estimate for each "Unit" until final completion and acceptance of the Work. If the total contract price estimate at the time of contract execution is \$400,000 or more, the City may retain five percent or more, provided that retainage complies with Tex. Gov't Code Ann. Sections 2252.031 – 2252.033.

After 50% of the Work is complete, the City will reduce retainage to five percent on the current and remaining estimates if the City finds that satisfactory progress is being made. When the Work is substantially complete (operational or beneficial occupancy), the City may reduce the retainage below five percent to only that amount necessary to the Work on which the price is stated separately in the Contract Documents, payment may be made in full, including retained percentages, less authorized deductions.

20.5 Before completion and acceptance of the Work, the City, with the Engineer's approval and the Contractor's concurrence, may use any completed or substantially completed portion of the Work. Such use does not constitute an acceptance of any portion of the Work.

20.6 The Engineer must certify that the Work is completed and accepted under the conditions of the Contract Documents by attaching a written statement to the final payment requisition. The City must pay the Contractor the entire balance due, including retainage, but excepting sums lawfully kept by the City, within 30 days of the Engineer's certification statement.

20.7 The Contractor must indemnify the City or the City's agents from all claims arising from claims for personal injuries, death, property damages and lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of labor, machinery and parts thereof, equipment, tools and all supplies, incurred in the furtherance of the performance of the Work.

Before the City accepts the Work, the Contractor must execute an Affidavit stating that all bills for labor, materials and incidentals incurred in this Contract have been paid in full, discharged, or waived and that the Contractor knows of no claims pending. The City may request additional evidence to its satisfaction. If the Contractor fails to comply, the City may, after notifying the Contractor, either pay unpaid bills or withhold from the Contractor's compensation a reasonable sum of money sufficient to pay all lawful claims until the Contractor furnishes satisfactory evidence that all liabilities have been fully discharged. When the Contractor furnishes the evidence, the City will resume payment to the Contractor, according to the Contract Documents' terms.

If the City elects to pay any unpaid bills of the Contractor, the City's payment is a payment made under the Contract Documents by the City to the Contractor, and the City is not liable to the Contractor for any such payments made in good faith.

This section does not create any duty owed by, or legal obligation of, the City to the Contractor, the Contractor's surety, or any third party.

20.8 If the City fails to pay the Contractor 30 days after approval by the Engineer, in addition to other remedies available to the Contractor, the City must add to each late payment interest at the maximum legal rate beginning the first day after the payment is due and continuing until the Contractor is paid.

20.9 The Engineer shall measure all items for pay purposes. Measurements and calculations will be made using accepted engineering practices. The actual measured and/or computed length, area, solid contents, number and weight only shall be considered for payment unless otherwise specifically provided.

20.10 This Contract, including the specifications and plans, is intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under this Contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work to be done and material to be furnished under this Contract may differ somewhat from these estimates, and that where the basis for payment under this Contract is the unit price method, payment shall be for the actual amount of such work done and the material furnished.

Where payment is based on the unit price method, the Contractor agrees that he will make no claim for damages, anticipated profits or otherwise on account of any differences which may be found between the quantities of work actually done, the material actually furnished under this Contract and the estimated quantities contemplated and contained in the proposal; provided, however, that in case the actual quantity of any major items should become as much as 20% more or less than the estimated or contemplated quantity for such items, then either party to this Contract, upon demand, shall be entitled to a revised consideration upon the portion of the work above or below 20% of the estimated quantity.

A "Major Item" shall be construed to be any individual bid item incurred in the proposal that has a total cost equal to or greater than five (5) per cent of the total Contract cost, computed on the basis of the proposal quantities and the Contract unit prices.

Any revised consideration is to be determined by agreement between the parties, otherwise by the terms of this Contract, as provided under "Extra Work".

21. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

The Contractor's acceptance of final payment is, and operates as, a full and final release to the City of all claims by the Contractor unless otherwise agreed to and stated in writing. Any payment, final or

otherwise, does not release the Contractor or its sureties from any obligations under the Contract Documents or the Performance and Payment Bonds.

22. CONTRACT SECURITY

The Contractor must, within 15 days after receiving the Notice of Award, furnish the City with a Performance Bond and a Payment Bond in penal sums equal to the amount of the Contract price, conditioned upon the performance by the Contractor of all undertakings, covenants, terms, conditions and agreements of the Contract Documents, and upon the prompt payment by the Contractor to all persons supplying labor and materials in the prosecution of the Work. The Bonds must be executed by the Contractor and a corporate bond company licensed to transact business in the State of Texas and acceptable to the City. Bonds for projects using federal dollars must be underwritten by a surety named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The Contractor bears the expense of these Bonds.

If a surety on any Bond is declared bankrupt or loses its right to do business in Texas or is removed from the list of Surety Companies accepted on Federal Bonds, the Contractor must, ten days after notice from the City to do so, substitute an acceptable Bond (or Bonds) in form and sum and signed by such other surety or sureties as may be satisfactory to the City. The City will not make any further payments to the Contractor for Work until the substitution is made.

23. ASSIGNMENTS

Neither the Contractor nor the City shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of any right, title, interest, or obligation, without written consent of the other party.

24. SEPARATE CONTRACTS

24.1 The City reserves the right to let other contracts, or to perform additional work itself, in connection with this Project. The Contractor must give others reasonable opportunity to introduce and store their materials and to execute their work, and must properly connect and coordinate Work with theirs. If the proper execution or results of any part of the Contractor's Work depends upon the work of any other Contractor or the City, the Contractor must inspect that work and promptly report to the Engineer any defects rendering it unsuitable.

24.2 If the performance of additional work by other Contractors or the City is not noted in the Contract Documents before the Contract is executed, the City must give written notice to the Contractor before starting any additional work. The Contractor may request a Change Order if the Contractor believes the additional work justifies it.

25. SUBCONTRACTING

25.1 The Contractor may utilize the services of specialty Subcontractors as is standard in the industry.

25.2 The Contractor must not award Work representing more than 50% of the Contract Price to Subcontractor(s) without prior written approval of the City.

25.3 The Contractor is as fully responsible to the City for the acts and omissions of the Subcontractors, and of persons directly or indirectly employed by them, as the Contractor is for the acts and omissions of the Contractor's direct employees.

25.4 The Contractor's agreement with the Subcontractors must incorporate these Contract Documents, as applicable to the Subcontractor's Work, including the rights of termination.

25.5 Nothing contained in this Contract creates any contractual relation between any Subcontractor and the City.

26. ENGINEER'S AUTHORITY

26.1 The Engineer acts as the City's representative during construction. The Engineer decides questions which may arise as to quality and acceptability of materials furnished and Work performed, promptly interprets the intent of the Contract Documents in a fair and unbiased manner, and visits the site to evaluate the Work.

26.2 The Engineer is not responsible for the construction means, controls, techniques, sequences, procedures, or construction safety, all such responsibility being the Contractor's.

27. LAND AND RIGHTS-OF-WAY

27.1 Before issuing the Notice to Proceed, the City will obtain all land and rights-of-way necessary for carrying out and completing the Work, unless otherwise agreed.

27.2 The City will provide the Contractor with information delineating and describing the requisite land and right-of-way.

27.3 The Contractor bears the cost of obtaining additional land or temporary access to land for temporary construction facilities or storage, and assumes any associated liability.

28. GUARANTY

28.1 The Contractor guarantees all materials and equipment furnished and all Work performed for a period of one year from the date of Substantial Completion. The City must notify the Contractor of observed defects with reasonable promptness. The Contractor must promptly correct and remedy all defects due to materials or workmanship, including repairing any damage resulting from the defect. The Contractor is never liable for less than the legal limit of liability under the laws of the State of Texas.

28.2 If the Contractor fails to make repairs, adjustments, or other Work caused by the defect, the City may do so and charge the Contractor or the surety the cost incurred.

29. TRENCH SAFETY

The Contractor must comply with Texas law regarding trench excavation exceeding five feet in depth.

29.1 The Contractor must comply with the requirements of Chapter 756, Subchapter C (Trench Safety) of the Texas Health and Safety Code, as amended and the requirements of Part 1926 Subpart P, Sections 1926.650 through 1926.653 inclusive, "Excavation, Trenching and Shoring," of the Occupational Safety and Health Administration Standards, as amended.

29.2 The Contractor must include a separate pay item for trench safety complying with trench safety requirements, stating a unit price per linear foot of trench safety systems as measured along the centerline of trench including manholes and other line structures.

29.3 Before beginning Work on this project, the Contractor must submit to the City a complete trench safety program that complies with state and federal regulations. It is the sole duty, responsibility and prerogative of the Contractor, not the City, to determine the specific applicability of the designed trench safety systems to each field condition encountered on the project.

29.4 The Contractor must provide the City the name of the "competent person" required by OSHA standards to perform the trench safety inspections. The Contractor must make daily inspections to ensure that the systems comply with all applicable laws and regulations, and must maintain a permanent record of daily inspections available for examination by the City or other government authority.

29.5 If evidence of possible cave-ins or slides is apparent, the Contractor must cease all Work in the trench and surrounding area until the necessary precautions have been taken by the Contractor to safeguard personnel entering the trench.

29.6 The Contractor must indemnify the City, the City's employees and agents, from any and all damages, costs (including, without limitation, legal fees, court costs, and the cost of investigation), judgments or claims by anyone for injury or death of persons resulting from the collapse or failure of trenches constructed under this Project.

Both the City and Contractor expressly intend this trench safety indemnity provision to require the Contractor to indemnify and protect the City from the consequences of the City's own negligence, either by act or omission in providing for trench safety, while City is participating in this contract where that negligence is a concurring cause of the injury, death, or damage. This indemnity includes, but is not limited to, any inspections by City employees or agents and any failure to issue orders to stop Work.

30. PRIORITY OF INTERPRETATION

The Contract Documents are complementary, and what is called for by one document shall be binding as if called for by all. In case of conflict between any of the Contract Documents, priority of interpretation shall be in the following order:

Change Orders issued after the date of the Contract
Contract
Addenda or Amendments issued before or at the time of Contract award
Performance and Payment Bonds, if any
Notice of Award and Notice to Proceed
Bid Schedule
Plans and Drawings
Technical Specifications
Supplementary Conditions
Special Conditions
General Conditions
Instructions to Bidders
Invitation to Bid

31. WEEKEND AND HOLIDAY WORK

The City does not permit Work on Sundays and holidays except in an emergency with immediate notice to the Engineer, or by written agreement with the City and Engineer.

32. SEVERABILITY

If any provisions of this Contract are determined to be void or unenforceable by a court of competent jurisdiction, that determination does not affect any other provisions of the Contract. If any provision is susceptible to more than one construction, a construction which renders the provision valid must be used.

33. VERIFICATION OF EMPLOYMENT ELIGIBILITY

The Contractor must comply with the Immigration Reform and Control Act (IRCA) by not knowingly obtaining labor or services of an unauthorized alien. The Contractor is solely responsible for verifying employment eligibility as required by IRCA.

34. EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the City to recruit, employ, and to provide compensation, promotion, and other conditions of employment without regard to race, color, religion, sex, age, national origin, or disability. The City affirms that employment decisions shall be made only on the basis of bonafide occupational qualifications. The City shall continually review its employment practices and personnel procedures and take positive steps to assure that equality of employment opportunity in the City of Abilene, Texas, is a fact as well as an ideal.

35. MINORITY AND WOMEN BUSINESS ENTERPRISES

The City hereby gives notice that Minority and Women Business Enterprises will be afforded equal opportunities to submit bids in for this contract and will not be discriminated against on the grounds of race, ethnicity, color, sex, religion or national origin in awarding the contract. Technical assistance is available to Minority and Women Business Enterprises through the Texas Tech University Small Business Development Center, 500 Chestnut St., 6th floor, Abilene, Texas, 79602, 325-690-0300.

36. SALES TAX

The City qualifies as an exempt agency, under the Texas Limited Sales, Excise and Use Tax Act (the "Tax Act"), and is not subject to any State or City sales taxes on materials incorporated into the project. The City will provide an exemption certificate to the Contractor. The Contractor must have a sales tax permit issued by the Comptroller of Public Accounts and must issue a resale certificate complying with the Tax Act, as amended, when purchasing incorporated materials. The Contractor is responsible for any sales taxes applicable to equipment purchases, rentals, leases, consumable supplies which are not incorporated into the project, tangible personal property purchased for use in the performance of this contract and not completely consumed, or other taxable services used to perform this contract, or other taxes required by law in connection with this Project.

37. EXTRA WORK

It is agreed that the Contractor shall perform all Extra Work under the direction of the Engineer when presented with a Written Work Order signed by the Engineer, subject, however, to the right of the Contractor to require a written confirmation of such Extra Work by the OWNER. It is also agreed that the compensation paid to the Contractor for performing said Extra Work shall be determined by one or more of the following methods:

Method A	By agreed unit prices; or
Method B	By agreed lump sum; or
Method C	If neither Method (A) nor Method (B) be agreed upon before the Extra Work is commenced, then the Contractor shall be paid for the "actual field cost" of the work, plus fifteen (15) percent.

In the event said Extra Work be performed and paid for under Method C, then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost of all workmen, such as foreman, timekeepers, mechanics and laborers, and materials, supplies, used on such Extra Work, plus actual transportation charges necessarily incurred, together with all power, fuel, lubricants, water and similar operating expense, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes and, a ratable proportion of premiums of Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property

Damage and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or directed by the OWNER, or by them agreed to.

The Engineer may direct the form in which accounts of the "actual field cost" shall be kept and the records of these accounts shall be made available to the Engineer. The Engineer may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise, these matters shall be determined by the Contractor. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using 100 percent, unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Associated General Contractors of America. Where practicable the terms and prices for the use of machinery and equipment shall be incorporated in the written Extra Work Order. The fifteen percent (15%) of the "actual field cost" to be paid the Contractor shall cover and compensate him/her for his/her profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where the Contractor's Camp or Field Office must be maintained primarily on account of such Extra Work; then the cost to maintain and operate the same shall be included in the "actual field cost".

No claim for Extra Work of any kind will be allowed unless ordered in writing by the Engineer. In case any orders or instructions, either oral or written appear to the Contractor to involve Extra work for which he/she should receive compensation or an adjustment in the construction time he/she shall make written request to the Engineer for written order authorizing such Extra Work. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the Engineer insists upon its performance, the Contractor shall proceed with the work after making written request for written order and shall keep accurate account of the "actual field cost" thereof, as provided under Method C.

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on **Form FHWA-1391**. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

Sample Bidder Certification

By signing the proposal the bidder certifies:

1. the only persons or parties interested in this proposal are those named and the bidder has not directly or indirectly participated in collusion, entered into an agreement or otherwise taken any action in restraint of free competitive bidding in connection with the above captioned project.
2. in the event of the award of a contract, the organization represented will secure bonds for the full amount of the contract.
3. the signatory represents and warrants that they are an authorized signatory for the organization for which the bid is submitted and they have full and complete authority to submit this bid on behalf of their firm.
4. that the certifications and representations contained in the proposal are true and accurate and the bidder intends the proposal to be taken as a genuine government record.

CHILD SUPPORT STATEMENT

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

State of Texas Child Support Business Ownership Form

County: _____

Project Name: _____

TxDOT CSJ: _____

LG Project Number: _____

Business Entity Submitting Bid: _____

Section 231.006, Family Code, requires a bid for a contract paid from state funds to include the names and social security number of individuals owning 25% or more of the business entity submitting the bid.

1. In the spaces below please provide the names and social security number of individuals owning 25% or more of the business.

Name	Social Security Number
_____	_____
_____	_____
_____	_____
_____	_____

2. Please check the box below if no individual owns 25% or more of the business.

(☐) No individual own 25% or more of the business.

Except as provided by Section 231.302(d), Family Code, a social security number is confidential and may be disclosed only for the purpose of responding to a request for information from an agency operating under the provisions of Part A and D to Title IV of the Federal Social Security Act (42 USC Section 601-617 and 651-699).

Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

The information collected on this form will be maintained by Enter Local Government Name. With few exceptions, you are entitled on request to be informed about the information collected about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under Section 559.004 of the Government Code, you are also entitled to have information about you corrected that you believe is incorrect.

Signature

Date

Printed Name

IF THIS PROJECT IS A JOINT VENTURE,

ALL PARTIES TO THE JOINT VENTURE MUST PROVIDE A COMPLETED FORM.

Special Provision to Item 000

Schedule of Liquidated Damages

The dollar amount of daily contract administration Liquidated Damages per Working Day is \$750.00

Special Provision to Item 000

Nondiscrimination

1. DESCRIPTION

All recipients of federal financial assistance are required to comply with various nondiscrimination laws including Title VI of the Civil Rights Act of 1964, as amended, (Title VI). Title VI forbids discrimination against anyone in the United States on the grounds of race, color, or national origin by any agency receiving federal funds.

Owner, as a recipient of Federal financial assistance, and under Title VI and related statutes, ensures that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any of Owner's programs or activities.

2. DEFINITION OF TERMS

Where the term "contractor" appears in the following six nondiscrimination clauses, the term "contractor" is understood to include all parties to contracts or agreements with the Owner.

3. NONDISCRIMINATION PROVISIONS

During the performance of this contract, the contractor agrees as follows:

- 3.1. **Compliance with Regulations.** The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- 3.2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3.3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 3.4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Owner or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Owner or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- 3.5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Owner shall impose such contract sanctions as it, the Owner may determine to be appropriate, including, but not limited to:
- withholding of payments to the contractor under the contract until the contractor complies, and/or
 - cancellation, termination or suspension of the contract, in whole or in part.
- 3.6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs (3.1) through (3.6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Owner may direct as a means of enforcing such provisions including sanctions for non-compliance: provided, however that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Owner to enter into such litigation to protect the interests of the Owner, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Special Provision to Item 000

Certification of Nondiscrimination in Employment

1. GENERAL

By signing this proposal, the Bidder certifies that Bidder has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if Bidder has not participated in a previous contract of this type, or if Bidder has had previous contract or subcontracts and has not filed, Bidder will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note—The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Special Provision to Item 000

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. GENERAL

In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

2. GOALS

2.1. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.

2.2. The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area are as follows:

Goals for minority participation in each trade, %	Goals for female participation in each trade, %
See Table 1	6.9

2.3. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it will apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 will be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor must make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals will be a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

2.4. A Contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each Contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other Contractors and subcontractors toward a goal in an approved plan does not excuse any covered Contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.

3. SUBCONTRACTING

The Contractor must provide written notification to the Owner within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this solicitation pending concurrence of the Owner in the award. The notification will list the names,

address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the Contract is to be performed.

4. COVERED AREA

As used in this special provision, and in the Contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.

5. REPORTS

The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

Table 1
Goals for Minority Participation

County	Participation, %	County	Participation, %
Anderson	22.5	Chambers	27.4
Andrews	18.9	Cherokee	22.5
Angelina	22.5	Childress	11.0
Aransas	44.2	Clay	12.4
Archer	11.0	Cochran	19.5
Armstrong	11.0	Coke	20.0
Atascosa	49.4	Coleman	10.9
Austin	27.4	Collin	18.2
Bailey	19.5	Collingsworth	11.0
Bandera	49.4	Colorado	27.4
Bastrop	24.2	Comal	47.8
Baylor	11.0	Comanche	10.9
Bee	44.2	Concho	20.0
Bell	16.4	Cooke	17.2
Bexar	47.8	Coryell	16.4
Blanco	24.2	Cottle	11.0
Borden	19.5	Crane	18.9
Bosque	18.6	Crockett	20.0
Bowie	19.7	Crosby	19.5
Brazoria	27.3	Culberson	49.0
Brazos	23.7	Dallam	11.0
Brewster	49.0	Dallas	18.2
Briscoe	11.0	Dawson	19.5
Brooks	44.2	Deaf Smith	11.0
Brown	10.9	Delta	17.2
Burleson	27.4	Denton	18.2
Burnet	24.2	DeWitt	27.4
Caldwell	24.2	Dickens	19.5
Calhoun	27.4	Dimmit	49.4
Callahan	11.6	Donley	11.0
Cameron	71.0	Duval	44.2
Camp	20.2	Eastland	10.9
Carson	11.0	Ector	15.1
Cass	20.2	Edwards	49.4
Castro	11.0	Ellis	18.2

County	Participation, %	County	Participation, %
El Paso	57.8	Kenedy	44.2
Erath	17.2	Kent	10.9
Falls	18.6	Kerr	49.4
Fannin	17.2	Kimble	20.0
Fayette	27.4	King	19.5
Fisher	10.9	Kinney	49.4
Floyd	19.5	Kleberg	44.2
Foard	11.0	Knox	10.9
Fort Bend	27.3	Lamar	20.2
Franklin	17.2	Lamb	19.5
Freestone	18.6	Lampasas	18.6
Frio	49.4	LaSalle	49.4
Gaines	19.5	Lavaca	27.4
Galveston	28.9	Lee	24.2
Garza	19.5	Leon	27.4
Gillespie	49.4	Liberty	27.3
Glasscock	18.9	Limestone	18.6
Goliad	27.4	Lipscomb	11.0
Gonzales	49.4	Live Oak	44.2
Gray	11.0	Llano	24.2
Grayson	9.4	Loving	18.9
Gregg	22.8	Lubbock	19.6
Grimes	27.4	Lynn	19.5
Guadalupe	47.8	Madison	27.4
Hale	19.5	Marion	22.5
Hall	11.0	Martin	18.9
Hamilton	18.6	Mason	20.0
Hansford	11.0	Matagorda	27.4
Hardeman	11.0	Maverick	49.4
Hardin	22.6	McCulloch	20.0
Harris	27.3	McLennan	20.7
Harrison	22.8	McMullen	49.4
Hartley	11.0	Medina	49.4
Haskell	10.9	Menard	20.0
Hays	24.1	Midland	19.1
Hemphill	11.0	Milam	18.6
Henderson	22.5	Mills	18.6
Hidalgo	72.8	Mitchell	10.9
Hill	18.6	Montague	17.2
Hockley	19.5	Montgomery	27.3
Hood	18.2	Moore	11.0
Hopkins	17.2	Morris	20.2
Houston	22.5	Motley	19.5
Howard	18.9	Nacogdoches	22.5
Hudspeth	49.0	Navarro	17.2
Hunt	17.2	Newton	22.6
Hutchinson	11.0	Nolan	10.9
Irion	20.0	Nueces	41.7
Jack	17.2	Ochiltree	11.0
Jackson	27.4	Oldham	11.0
Jasper	22.6	Orange	22.6
Jeff Davis	49.0	Palo Pinto	17.2
Jefferson	22.6	Panola	22.5
Jim Hogg	49.4	Parker	18.2
Jim Wells	44.2	Parmer	11.0
Johnson	18.2	Pecos	18.9
Jones	11.6	Polk	27.4
Karnes	49.4	Potter	9.3
Kaufman	18.2	Presidio	49.0
Kendall	49.4	Randall	9.3

County	Participation, %	County	Participation, %
Rains	17.2	Reagan	20.0
Real	49.4	Throckmorton	10.9
Red River	20.2	Titus	20.2
Reeves	18.9	Tom Green	19.2
Refugio	44.2	Travis	24.1
Roberts	11.0	Trinity	27.4
Robertson	27.4	Tyler	22.6
Rockwall	18.2	Upshur	22.5
Runnels	20.0	Upton	18.9
Rusk	22.5	Uvalde	49.4
Sabine	22.6	Val Verde	49.4
San Augustine	22.5	Van Zandt	17.2
San Jacinto	27.4	Victoria	27.4
San Patricio	41.7	Walker	27.4
San Saba	20.0	Waller	27.3
Schleicher	20.0	Ward	18.9
Scurry	10.9	Washington	27.4
Shackelford	10.9	Webb	87.3
Shelby	22.5	Wharton	27.4
Sherman	11.0	Wheeler	11.0
Smith	23.5	Wichita	12.4
Somervell	17.2	Wilbarger	11.0
Starr	72.9	Willacy	72.9
Stephens	10.9	Williamson	24.1
Sterling	20.0	Wilson	49.4
Stonewall	10.9	Winkler	18.9
Sutton	20.0	Wise	18.2
Swisher	11.0	Wood	22.5
Tarrant	18.2	Yoakum	19.5
Taylor	11.6	Young	11.0
Terrell	20.0	Zapata	49.4
Terry	19.5	Zavala	49.4

Special Provision to Item 000

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. GENERAL

1.1. As used in these specifications:

- "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
- "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- "Minority" includes:
 - Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

1.2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it will physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.

1.3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) will be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the equal employment opportunity (EEO) clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

1.4. The Contractor will implement the specific affirmative action standards provided in Section 1.7.1. through Section 1.7.16. of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing Contracts in geographical areas where they do not have a Federal or federally assisted construction Contract will apply the minority and female goals established for the geographical area where the Contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The

Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

- 1.5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women will excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- 1.6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
- 1.7. The Contractor will take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications will be based upon its effort to achieve maximum results from its actions. The Contractor will document these efforts fully, and will implement affirmative action steps at least as extensive as the following:
 - 1.7.1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor will specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - 1.7.2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - 1.7.3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this will be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - 1.7.4. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral Process has impeded the Contractor's efforts to meet its obligations.
 - 1.7.5. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the U.S. Department of Labor. The Contractor will provide notice of these programs to the sources compiled under 7b above.
 - 1.7.6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
 - 1.7.7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other

employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., before the initiation of construction work at any job site. A written record must be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- 1.7.8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- 1.7.9. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month before the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor will send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- 1.7.10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- 1.7.11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- 1.7.12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- 1.7.13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- 1.7.14. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities will be provided to assure privacy between the sexes.
- 1.7.15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- 1.7.16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 1.8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Section 7.1. through Section 7.16.). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Section 7.1. through Section 7.16. of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation will not be a defense for the Contractor's noncompliance.
- 1.9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor

may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

- 1.10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- 1.11. The Contractor will not enter into any Subcontract with any person or firm debarred from Government Contracts pursuant to Executive Order 11246.
- 1.12. The Contractor will carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties will be in violation of these specifications and Executive Order 11246, as amended.
- 1.13. The Contractor, in fulfilling its obligations under these specifications, will implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60-4.8.
- 1.14. The Contractor will designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records must at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records must be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
- 1.15. Nothing herein provided will be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
- 1.16. In addition to the reporting requirements set forth elsewhere in this Contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, will submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the included instructions.

Special Provision to Item 000

Disadvantaged Business Enterprise in Federal-Aid Contracts

1. DESCRIPTION

The purpose of this Special Provision is to carry out the U.S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT-assisted Contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT-assisted Contracts.

2. DISADVANTAGED BUSINESS ENTERPRISE IN FEDERAL-AID CONTRACTS

- 2.1. **Policy.** It is the policy of the DOT and the Texas Department of Transportation (Department) that DBEs, as defined in 49 CFR Part 26, Subpart A, and the Department's DBE Program, will have the opportunity to participate in the performance of Contracts financed in whole or in part with federal funds. The DBE requirements of 49 CFR Part 26, and the Department's DBE Program, apply to this Contract as follows.

The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A, and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this Contract.

The Contractor, subrecipient, or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate.

The requirements of this Special Provision must be physically included in any subcontract.

By signing the Contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to meet the commitment.

2.2. Definitions.

- 2.2.1. **Administrative Reconsideration.** A process by which the low bidder may request reconsideration when the Department determines the good faith effort (GFE) requirements have not been met.
- 2.2.2. **Commercially Useful Function (CUF).** A CUF occurs when a DBE has the responsibility for the execution of the work and carrying out such responsibilities by actually performing, managing, and supervising the work.
- 2.2.3. **Disadvantaged Business Enterprise (DBE).** A for-profit small business certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26, that is at least 51% owned by one or more socially and economically disadvantaged individuals, or in the case of a publicly owned business, in which is at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals, and whose management and daily business operations are controlled by one or more of the individuals who own it.
- 2.2.4. **DBE Joint Venture.** An association of a DBE firm and one or more other firms to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the Contract and whose

share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

- 2.2.5. **DOT.** The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).
- 2.2.6. **Federal-Aid Contract.** Any Contract between the Owner and a Contractor that is paid for in whole or in part with DOT financial assistance.
- 2.2.7. **Good Faith Effort.** All necessary and reasonable steps to achieve the contract goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. Good faith efforts are evaluated prior to award and throughout performance of the Contract. For guidance on good faith efforts, see 49 CFR Part 26, Appendix A.
- 2.2.8. **North American Industry Classification System (NAICS).** A designation that best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau website:
<http://www.census.gov/eos/www/naics/>.
- 2.2.9. **Race-Conscious.** A measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.
- 2.2.10. **Race-Neutral DBE Participation.** Any participation by a DBE through customary competitive procurement procedures.
- 2.2.11. **Texas Unified Certification Program (TUCP) Directory.** An online directory listing all DBEs currently certified by the TUCP. The Directory identifies DBE firms whose participation on a Contract may be counted toward achievement of the assigned DBE Contract goal.
- 2.3. **Contractor's Responsibilities.**
 - 2.3.1. **DBE Liaison Officer.** Designate a DBE liaison officer who will administer the Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.
 - 2.3.2. **Compliance Tracking System (CTS).** This Contract is subject to Contract compliance tracking. Contractors and DBEs are required to provide any noted and requested Contract compliance-related data to the Owner. This includes, but is not limited to, commitments, payments, substitutions, and good faith efforts. Contractors and DBEs are responsible for responding by any noted response date or due date to any instructions or request for information by the Owner.
 - 2.3.3. **Apparent Low Bidder.** The apparent low bidder must submit DBE commitments to satisfy the DBE goal or submit good faith effort Form 2603 and supporting documentation demonstrating why the goal could not be achieved, in whole or part, no later than 5 calendar days after bid opening. The means of transmittal and the risk of timely receipt of the information will be the bidder's responsibility and no extension of the 5-calendar-day timeframe will be allowed for any reason.
 - 2.3.4. **DBE Contractor.** A DBE Contractor may receive credit toward the DBE goal for work performed by its own forces and work subcontracted to DBEs. In the event a DBE subcontracts to a non-DBE, that information must be reported monthly.
 - 2.3.5. **DBE Committal.** Only those DBEs certified by the TUCP are eligible to be used for goal attainment. The Directory can be accessed at the following Internet address:
<https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?TN=txdot&XID=2340>.

A DBE must be certified on the day the commitment is considered and at time of subcontract execution. It is the Contractor's responsibility to ensure firms identified for participation are approved certified DBE firms.

The Bidder is responsible to ensure that all submittals are checked for accuracy. Any and all omissions, deletions, and/or errors that may affect the end result of the commitment package are the sole liabilities of the bidder.

Commitments in excess of the goal are considered race-neutral commitments.

- 2.3.6. Good Faith Effort Requirements.** A Contractor who cannot meet the Contract goal, in whole or in part, must make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A.

- 2.3.6.1. Administrative Reconsideration.** If the Owner determines that the apparent low bidder has failed to satisfy the good faith efforts requirement, the Owner will notify the Bidder of the failure and will give the Bidder an opportunity for administrative reconsideration.

The Bidder must request an administrative reconsideration of that determination within 3 days of the date of receipt of the notice. The request must be submitted directly to the Owner.

If a reconsideration request is timely received, the reconsideration decision will be made by the Owner's DBE liaison officer or, if the DBE liaison officer took part in the original determination that the Bidder failed to satisfy the good faith effort requirements, an Owner employee who holds a senior leadership position and reports directly to the executive officer, and who did not take part in the original determination will act as an administrative hearing officer. The Bidder may provide written documentation or argument concerning whether the assigned DBE contract goal was met or whether adequate good faith efforts were made to meet the Contract goal.

The DBE liaison or other Owner employee making the reconsideration determination may request a meeting with the Bidder to discuss whether the goal commitments were met or whether adequate good faith efforts were made to obtain the commitments to meet the Contract goal.

The meeting must be held within 7 days of the date of the request submitted under this section. If the Bidder is unavailable to meet during the 7-day period, the reconsideration decision will be made on the written information provided by the Bidder.

The Owner will provide to the Bidder a written decision that explains the basis for finding that the Bidder did not meet the Contract goal or did not make adequate good faith efforts to meet the Contract goal, within 7 days of the date of the notice issued in this section.

The reconsideration decision is final and not subject to administrative appeal.

- 2.3.7. Determination of DBE Participation.** The work performed by the DBE must be reasonably construed to be included in the work area and NAICS work code identified by the Contractor in the approved commitment.

Participation by a DBE on a Contract will not be counted toward DBE goals until the amount of the participation has been paid to the DBE.

Payments made to a DBE that was not on the original commitment may be counted toward the Contract goal if that DBE was certified as a DBE before the execution of the subcontract and has performed a Commercially Useful Function.

The total amount paid to the DBE for work performed with its own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its Contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is itself a DBE.

DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies from the Contractor or its affiliates is not allowed. Project materials or supplies acquired from an affiliate of the Contractor cannot directly or indirectly (second or lower tier subcontractor) be used for DBE goal credit.

If a DBE firm is declared ineligible due to DBE decertification after the execution of the DBE's subcontract, the DBE firm may complete the work and the DBE firm's participation will be counted toward the Contract goal. If the DBE firm is decertified before the DBE firm has signed a subcontract, the Contractor is obligated to replace the ineligible DBE firm or demonstrate that it has made good faith efforts to do so.

The Contractor may count 100% of its expenditure to a DBE manufacturer. According to 49 CFR 26.55(e)(1)(i), a DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.

The Contractor may count only 60% of its expenditure to a DBE regular dealer. According to 49 CFR 26.55(e)(2)(i), a DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. A long-term lease with a third-party transportation company is not eligible for 60% goal credit.

With respect to materials or supplies purchased from a DBE that is neither a manufacturer nor a regular dealer, the Contractor may count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site.

A Contractor may count toward its DBE goal a portion of the total value of the Contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the Contract performed by the DBE.

2.3.8. Commercially Useful Function. It is the Contractor's obligation to ensure that each DBE used on federal-assisted contracts performs a commercially useful function on the Contract.

The Owner will monitor performance during the Contract to ensure each DBE is performing a CUF.

Under the terms established in 49 CFR 26.55, a DBE performs a CUF when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

With respect to material and supplies used on the Contract, a DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing the material, if applicable, and paying for the material itself.

With respect to trucking, the DBE trucking firm must own and operate at least one fully licensed, insured, and operational truck used on the Contract. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the Contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

A DBE does not perform a CUF when its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of DBE participation. The Owner will evaluate similar transactions involving non-DBEs in order to determine whether a DBE is an extra participant.

If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its Contract with its own work force, or the DBE subcontracts a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved, the Owner will presume that the DBE is not performing a CUF.

If the Owner determines that a DBE is not performing a CUF, no work performed by such DBE will count as eligible participation. The denial period of time may occur before or after a determination has been made by the Owner.

In case of the denial of credit for non-performance, the Contractor will be required to provide a substitute DBE to meet the Contract goal or provide an adequate good faith effort when applicable.

- 2.3.8.1. **Rebuttal of a Finding of No Commercially Useful Function.** Consistent with the provisions of 49 CFR 26.55(c)(4)&(5), before the Owner makes a final finding that no CUF has been performed by a DBE, the Owner will notify the DBE and provide the DBE the opportunity to provide rebuttal information.

CUF determinations are not subject to administrative appeal.

- 2.3.9. **Joint Check.** The use of joint checks between a Contractor and a DBE is allowed with Owner approval. To obtain approval, the Contractor must submit a completed Form 2178, "DBE Joint Check Approval," to the Owner.

The Owner will closely monitor the use of joint checks to ensure that such a practice does not erode the independence of the DBE nor inhibit the DBE's ability to perform a CUF. When joint checks are utilized, DBE credit toward the Contract goal will be allowed only when the subcontractor is performing a CUF in accordance with 49 CFR 26.55(c)(1).

Long-term or open-ended joint checking arrangements may be a basis for further scrutiny and may result in the lack of participation towards the Contract goal requirement if DBE independence cannot be established.

Joint checks will not be allowed simply for the convenience of the Contractor.

If the proper procedures are not followed or the Owner determines that the arrangements result in a lack of independence for the DBE involved, no credit for the DBE's participation as it relates to the material cost will be used toward the Contract goal requirement, and the Contractor will need to make up the difference elsewhere on the project.

- 2.3.10. **DBE Termination and Substitution.** No DBE named in the commitment submitted under Section 2.3.5. will be terminated for convenience, in whole or part, without the Owner's approval. This includes, but is not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

Unless consent is provided, the Contractor will not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Contractor, prior to submitting its request to terminate, must first give written notice to the DBE of its intent to terminate and the reason for the termination. The Contractor will copy the Owner on the Notice of Intent to terminate.

The DBE has 5 calendar days to respond to the Contractor's notice and will advise the Contractor and the Owner of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Owner should not approve the prime Contractor's request for termination.

The Owner may provide a shorter response time if required in a particular case as a matter of public necessity.

The Owner will consider both the Contractor's request and DBE's stated position prior to approving the request. The Owner may provide a written approval only if it agrees, for reasons stated in its concurrence document, that the Contractor has good cause to terminate the DBE. If the Owner does not approve the request, the Contractor must continue to use the committed DBE firm in accordance with the Contract. For guidance on what good cause includes, see 49 CFR 26.53.

Good cause does not exist if the Contractor seeks to terminate, reduce, or substitute a DBE it relied upon to obtain the Contract so that the Contractor can self-perform the work for which the DBE firm was engaged.

When a DBE subcontractor is terminated, make good faith efforts to find, as a substitute for the original DBE, another DBE to perform, at least to the extent needed to meet the established Contract goal, the work that the original DBE was to have performed under the Contract.

Submit the completed Form 2228, "DBE Termination Substitution Request," within seven (7) days, which may be extended for an additional 7 days if necessary at the request of the Contractor. The Owner will provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

2.3.11.

Reports and Records. By the 15th of each month and after work begins, report payments to meet the DBE goal and for DBE race-neutral participation on projects with or without goals. These payment reports will be required until all DBE subcontracting or material supply activity is completed. Negative payment reports are required when no activity has occurred in a monthly period.

Notify the Owner if payment to any DBE subcontractor is withheld or reduced.

Before receiving final payment from the Owner, the Contractor must indicate a final payment on the compliance tracking system. The final payment is a summary of all payments made to the DBEs on the project.

All records must be retained for a period of 3 years following completion of the Contract work, and must be available at reasonable times and places for inspection by authorized representatives of the Owner, Texas Department of Transportation or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.

2.3.12.

Failure to Comply. If the Owner determines the Contractor has failed to demonstrate good faith efforts to meet the assigned goal, the Contractor will be given an opportunity for reconsideration by the Owner.

A Contractor's failure to comply with the requirements of this Special Provision will constitute a material breach of this Contract. In such a case, the Owner reserves the right to terminate the Contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor; or to secure a refund, not as a penalty but as liquidated damages, to the Owner or such other remedy or remedies as the Owner deems appropriate.

2.3.13.

Investigations. The Owner may conduct reviews or investigations of participants as necessary. All participants, including, but not limited to, DBEs and complainants using DBE Subcontractors to meet the Contract goal, are required to cooperate fully and promptly with compliance reviews, investigations, and other requests for information.

2.3.14.

Falsification and Misrepresentation. If the Owner determines that a Contractor or subcontractor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by the Owner to be unallowable, or if the Contractor engages in repeated violations, falsification, or misrepresentation, the Owner may:

- refuse to count any fraudulent or misrepresented DBE participation;
- withhold progress payments to the Contractor commensurate with the violation;
- refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; and/or
- seek any other available contractual remedy.

Special Provision to Item 2

Instructions to Bidders

Item 2, "Instructions to Bidders," of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Article 2.3., "Issuing Proposal Forms," second paragraph, is supplemented by the following.

The Owner will not issue a proposal form if one or more of the following apply:

- the Bidder or affiliate of the Bidder that was originally determined as the apparent low Bidder on a project, but was deemed nonresponsive for failure to submit a DBE commitment as specified in Article 2.14., "Disadvantaged Business Enterprise (DBE)," is prohibited from rebidding that specific project.

Article 2.7., "Nonresponsive Bid," is supplemented by the following:

The Owner will not accept a nonresponsive bid. A bid that has one or more of the deficiencies listed below is considered nonresponsive:

- the Bidder failed to submit a DBE commitment as specified in Article 2.14., "Disadvantaged Business Enterprise (DBE)."

Article 2.14., "Disadvantaged Business Enterprise (DBE)," is added.

The apparent low bidder must submit DBE commitment information on federally funded projects with DBE goals within 5 calendar days (as defined in 49 CFR Part 26, Subpart A) of bid opening. For a submission that meets the 5-day requirement, administrative corrections will be allowed.

If the apparent low Bidder fails to submit their DBE information within the specified timeframe, the apparent low bidder will be deemed nonresponsive and the proposal guaranty will become the property of the Owner, not as a penalty, but as liquidated damages. The Bidder forfeiting the proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in the design of the work. The Owner may recommend:

- reject all bids, or
- award the Contract to the new apparent low Bidder, if the new apparent low Bidder submits DBE information within one calendar day of notification by the Owner.

If the new apparent low Bidder is unable to submit the required DBE information within one calendar day:

- the new apparent low Bidder will not be deemed nonresponsive,
- the Bidder's guaranty will not be forfeited,
- the Owner will reject all bids, and
- the Bidder will remain eligible to receive future proposals for the same project.

Special Provision to Item 7

Legal Relations and Responsibilities

Item 7, "Legal Relations and Responsibilities," of the Standard Specifications is amended with respect to the clauses cited below. No other clauses or requirements of this Item are waived or changed.

Section 2.6.5., "Training", is supplemented by the following:

Coordinate enrollment, pay associated fees, and successfully complete approved Training or Contractor Delivered Training. Training is valid for the period prescribed by the provider but no less than 3 yrs. from the date of completion. The Owner may require training at a frequency less than the period prescribed or 3 yrs. based on Owner's needs. Training and associated fees will not be measured or paid for directly but are considered subsidiary to pertinent Items.

2.6.5.1. Approved Training. Approved training is listed below:

2.6.5.1.1 Contractor Responsible Person and Alternate.

Provider	Course Title
American Traffic Safety Services Association	Traffic Control Supervisor
National Highway Institute	Maintenance of Traffic Control for Supervisors

2.6.5.1.2. Flagger Instructor Training.

Provider	Course Title
American Traffic Safety Services Association	Flagging Instructor Training Course
Texas Engineering Extension Services	Train-the-Trainer Flaggers
National Safety Council	Flagger (Instructor)
University of Texas at Arlington, Division for Enterprise Development	Certified Flagger Instructor

Flagger Training.

Provider	Course Title
Texas Engineering Extension Services	Flaggers in Work Zones
National Safety Council	Flagger (Novice)
University of Texas at Arlington, Continuing Education Department	Flaggers in Work Zones (TxDOT Training)
University of Texas at Arlington, Continuing Education Department	WZ Traffic Control/Qualified Flagger
Associated Builders and Contractors, Austin Chapter	Flagger Training
LDI Safety Training	Flagger Training
Tipton Compliance and Safety	Flagger Training

2.6.5.1.3. Law Enforcement Personnel.

Provider	Course Title
National Highway Institute	Safe and Effective Use of Law Enforcement Personnel in Work Zones

2.6.5.1.4. Other Work Zone Personnel.

Provider	Course Title
American Traffic Safety Services Association	Traffic Control Technician Training
Texas Engineering Extension Services	Work Zone Traffic Control
National Highway Institute	Maintenance of Traffic Control for Technicians
National Highway Institute	Maintenance Training Series: Basics of Work Zone Traffic Control

2.6.5.2. Contractor Delivered Training. Develop Contractor Delivered Training curriculum and submit the curriculum to the Owner for approval. Do not implement the training curriculum before receiving written approval from the Owner. The work performed and materials furnished to develop the curriculum and provide training will not be measured or paid for directly but will be considered subsidiary to pertinent Items.

A contractor's certified flagging instructor is permitted to train other flaggers.

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.003(1-a) with a local governmental entity and the vendor meets requirements under Section 176.005(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.005(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.005, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(e)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.leg.state.tx.us/Docs/LG/html/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

...
(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

Form 1295 Information

Certificate of Interested Parties (Form 1295)

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

Filing Process:

On January 1, 2016, the ethics commission made available on its website a new filing application that must be used to file Form 1295. A business entity must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. **An authorized agent of the business entity must sign the printed copy of the form and have the form notarized.** The completed Form 1295 with the certification of filing must be filed with the governmental body or state agency with which the business entity is entering into the contract.

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm